

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JOHN SMITH, KIRBY BRADSHAW, SPENCER
LUCAS, et al.,

No. C 07-6298 MHP

Plaintiffs ,

vs.

CITY OF OAKLAND, a municipal corporation,
WAYNE TUCKER, in his capacity as Chief of Police
for the City of Oakland, MAYER, individually and in
his capacity as a police officer for the City of Oakland,
et al.,

Defendants.

No. C 07-4179 MHP

DAVID WARD, MARK ENGRAM, MICHAEL
HOLMES, RICHARD RIX, et al.,

**FINDINGS OF FACT
AND CONCLUSIONS
OF LAW**

Plaintiffs,

vs.

CITY OF OAKLAND, a municipal corporation;
WAYNE TUCKER, in his capacity as Chief of Police
for the City of Oakland, RICHARD VASS,
individually and in his capacity as a police officer for
the City of Oakland, et al.,

Defendants.

INTRODUCTION

These actions are two of the over forty actions filed in this court related to claims brought against individual police officers, police chiefs and the City of Oakland pursuant to 42 U.S.C. section 1983 for violations of the Fourth Amendment to the United States Constitution, specifically alleging unlawful searches, referred to as “strip searches”, conducted in public or publicly observable places by officers of the Oakland Police Department. By stipulation the trials of five of these plaintiffs were tried before the court without a jury. Two of the five, Kirby Bradshaw and Spencer Lucas, are named plaintiffs in C 07-6298 MHP; three of the five, Mark Engram, Michael Holmes and Richard Rix, are named plaintiffs in C 07-4179 MHP. The incident complained of in the first case involved Officer Ingo Mayer and other officers who are not named in the complaint. One incident alleged in the second case involved all three plaintiffs and a single officer, Richard Vass. Officer Vass is also alleged to have violated the Fourth Amendment rights of each of these three on other occasions. These particular claims were selected by the parties to be tried in a bench trial before the remainder of the claims of other parties are tried.

Plaintiffs have requested the dismissal of any racial discrimination claims pled in their complaints; they have also stipulated to dismissal of the claims against Officer Mork in C 07-4179. All of these claims are hereby dismissed.

Testimony was limited to the issues of individual liability and damages, with municipal and supervisory liability issues deferred until after the resolution of this first phase. Having considered the testimony and evidence presented at trial, the briefs of counsel, and for the reasons set forth below, the court now enters the following Findings of Fact and Conclusions of Law in accordance with Federal Rule of Civil Procedure 52(c). To the extent that Findings of Fact are contained in the Conclusions of Law they are deemed Findings of Fact and to the extent Conclusions of Law are included in the Findings of Fact they are deemed Conclusions of Law.

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1 I. FINDINGS OF FACT - C 07-6298

2 1. On December 15, 2005, around 8:00 am, plaintiff Spencer Troy Lucas was driving his
3 gold color Cadillac Coupe DeVille in West Oakland. With him in the front seat was his friend,
4 Marty Robinson, and in the back seat was plaintiff Kirby Bradshaw. The three are all African-
5 American men. They had picked up breakfast to go and then drove on Telegraph Avenue to 34th
6 Street.

7 2. They proceeded westbound on 34th Street and turned left on Martin Luther King Drive
8 ("MLK"). As they approached the intersection of 34th and MLK, Lucas saw two unmarked, black
9 police cars stopped for a red light in the southbound lane of MLK. When he made the left turn onto
10 MLK Lucas saw the police cars drive through the red light and follow him. Lucas' Cadillac was
11 pulled over by the two unmarked police cars on MLK at the northwest corner of 32nd Street.
12 Bradshaw and Robinson testified similarly.

13 3. At the time he encountered the police cars at 34th and MLK, Lucas was driving within
14 the speed limit, and he passed through the intersection on the green light. The Cadillac was fully
15 registered and licensed.

16 4. On that day, defendant Officer Ingo Mayer and his long time partner, Officer
17 D'VourThurston, were driving in an unmarked police car. Parole Agent Steven Nakamura and
18 Oakland Police Officers Mack and Martinez were in a second unmarked car. They were all working
19 as part of the Parole and Corrections (PAC) Team.

20 5. Officer Mayer made the decision to pull over the Cadillac. He was the lead officer for
21 this traffic stop and the ensuing events, although he and the other officers were acting as a team.
22 Officer Mayer testified he pulled over the Cadillac for a "traffic violation." However, Mayer could
23 not articulate any factual or legal basis for this stop. Nor was any report or other writing produced at
24 trial documenting the stop. None of the other officers involved in this stop could identify the
25 specific reason for the stop. No evidence was produced at trial to show that the Cadillac was
26 operated in violation of any law at the time. Officer Mayer states that he did not know who was in
27 the Cadillac. The windows of Lucas' vehicle were not tinted and from all the evidence in the record
28 the court concludes that a reasonable officer would have been able to observe that the occupants

1 were three black men. Neither officer Mayer nor any other officer on the scene knew anything about
2 the parole or probation status of the men in the Cadillac before stopping them. The court finds that
3 there was no reasonable suspicion to justify this traffic stop.

4 6. Officer Mayer was required to complete a "Racial Profiling Stop-Data Collection Form"
5 for this traffic stop. That form was supposed to document the reason for the stop. Officer Mayer
6 was unable to locate a completed stop data form for this incident, and none was ever produced by
7 the City of Oakland at trial.

8 7. Officer Mayer came to the driver's side window of the Cadillac and was joined by Parole
9 Agent Nakamura. Officer Thurston went to the passenger side of the car. The officers each asked
10 for I.D. and whether anyone was on probation or parole. Lucas told Mayer he was on parole. Mayer
11 told Lucas to get out of the car, and he handcuffed him. Mayer agrees that Lucas was totally
12 compliant and not acting suspicious in any way. Mayer claims he was merely detaining, and not
13 arresting, Lucas at that time.

14 8. Despite his questions to the officers, Lucas was never told by Mayer or any other officer
15 why his car was pulled over or why he was being handcuffed and detained. At the time of this
16 detention the officers were not aware of any parole or probation violations.

17 9. While Officer Mayer was talking to Lucas, Officer Thurston was at the passenger side
18 window talking to Robinson and Bradshaw.

19 10. Officer Mayer took Lucas to the back of the Cadillac with Agent Nakamura. Mayer and
20 Nakamura questioned Lucas about where he lived and whether he had any drugs on him. During
21 this time, Nakamura also spoke with Lucas' parole agent, Agent Olgastine Bradley, over a cell
22 phone. Lucas could hear part of that cell phone conversation as Nakamura repeated it to Mayer.
23 Both Lucas and Agent Bradley stated that Lucas was doing fine on parole, and that he was
24 essentially homeless at that time, sleeping in a van he owned or at a nearby motel. It is not disputed
25 that Lucas' parole was scheduled to terminate in approximately one month.

26 11. Officer Mayer conducted a parole search of Lucas, emptying his pockets onto the trunk
27 of the Cadillac. Mayer agrees he conducted a parole search of Lucas at this time, patting him down
28 outside of his clothing, as well as inside his waistband and underneath his belt. ¹

1 12. During the time Mayer was dealing with Lucas, Bradshaw and Robinson were told to
2 exit the car and did so. Robinson was standing near the curb, next to the passenger side of the
3 Cadillac. Bradshaw was also near the curb but at the back of the Cadillac. Bradshaw was not
4 handcuffed. Other officers were searching the Cadillac.

5 13. As Officer Mayer continued to interrogate Lucas about drugs while they stood in the
6 street behind the Cadillac, he undid Lucas' belt buckle, causing his pants to fall down to his ankles.
7 Lucas protested that he was on parole for using a fake ID, not drugs. Lucas told Mayer, "I'm going
8 to get off parole in 30 days." Mayer replied, "Not if I can help it." Mayer asked Lucas if he had any
9 "dope in your butt cheeks," as he pulled Lucas' underwear halfway down. Lucas spread his ankles
10 apart to try to keep his boxer shorts from coming all the way down. Then, Mayer shook Lucas'
11 boxer shorts against his testicles.

12 14. Lucas heard Bradshaw arguing with officers and briefly looked over in that direction.
13 Lucas heard Officer Mayer tell the officer near Bradshaw to see if Bradshaw had stashed anything,
14 or something to that effect. When Lucas looked over there again, he saw Bradshaw with his pants
15 down to the ground. Lucas and Bradshaw were each complaining about their treatment to officers.
16 Shortly after that, Lucas looked over and saw that Bradshaw "was standing out there butt naked, just
17 like I was," with his boxer shorts down.

18 15. Bradshaw testified similarly that he was moved to the rear of the Cadillac near Lucas,
19 where he was also subjected to a pat down search. He still was not handcuffed. He looked toward
20 Lucas and saw Officer Mayer reach around and unbuckle Lucas' belt. Bradshaw heard Officer
21 Mayer say to Officer Thurston, who was searching Bradshaw, "you need to have him take his pants
22 down." Then, the officer who Mayer had just addressed ordered Bradshaw to take his own pants
23 down. Bradshaw complied. Bradshaw recalled, "It was Officer Mayer [who] gave the order to have
24 my pants taken down. And another officer stood by and said, go ahead, take your pants down, let
25 them fall, and pull your pants your underwear out and shake them. And at the time, I'm looking
26 around at Troy [Lucas] being done the same way at the same time." Bradshaw complied with orders

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1 to pull his boxer shorts down below his buttocks. Bradshaw's shorts ended up at his ankles.

2 Bradshaw explained that "It was the officer instructing me to do that, not Mayer. Mayer instructed
3 him to instruct me."

4 16. Lucas and Bradshaw saw each other with their pants and underwear down. While they
5 were standing in the street with their pants down, officers were talking and laughing. Officers
6 repeatedly told Bradshaw to keep his head down, although he glanced around occasionally.
7 Bradshaw estimates that his pants and shorts were down for five to seven minutes – "It felt like a
8 long time." Bradshaw recalls that Lucas' pants were down for about the same time. Eventually, the
9 officer who was dealing with Bradshaw told him to pull his own pants up and he complied.. Lucas,
10 who was handcuffed was not able to pull his own pants up. Mayer pulled Lucas' shorts and pants
11 back up without fastening his pants, so that Lucas had to hold his pants up.

12 17. Throughout this entire incident Lucas and Bradshaw were compliant. The officers never
13 discovered anything illegal on either of their persons.

14 18. Officers Mayer and Thurston denied that Lucas or Bradshaw were strip searched or that
15 their pants were ever down. Officer Thurston testified that he was the officer who searched
16 Bradshaw, however at the time he was interviewed by an Internal Affairs investigator concerning
17 this incident, he could not remember having searched Bradshaw. At trial he again said he did not
18 recall searching Bradshaw. Mayer and Thurston agree that under the circumstances any strip search
19 of Lucas or Bradshaw clearly would have been unjustified, contrary to their department's policy on
20 field strip searches, and unlawful.

21 19. Officers Mayer and Thurston recalled that they were trained, and knew at the time, that
22 if they had been aware of other officers strip searching Lucas or Bradshaw, they would have been
23 under a legal and ethical duty to intervene to stop the searches and report such misconduct. In fact,
24 Mayer has known since the police academy that if he failed to intervene when he had a duty to do
25 so, he would be equally responsible for any resulting violation of rights.

26 20. Officer Mayer testified that a parole or probation search is not a strip search, and that a
27 person's parole or probation status alone does not legally justify a strip search. Any strip search he
28 did, whether or not the person was on probation or parole, would be subject to the specific strip

1 search requirements in the Oakland Police Department's 2004 strip search policy. Mayer had been
2 trained that a strip search can be a deeply humiliating experience for the person being searched.

3 21. The area where this incident took place was "a busy street" at 8:00 in the morning.
4 During this incident, Mayer observed a fair number of people walking around the area. There was
5 also a convenience store located across the street. Had Officer Mayer wanted to conduct a strip
6 search of either Lucas or Bradshaw, he agreed he could have done so at the jail or at other private
7 facilities available to him.

8 22. Lucas recalled that while he was being strip searched people started coming around to
9 watch: "It start[ed] forming a crowd." A "nice sized group" of people had gathered to watch at the
10 corner and across the street in front of the store and restaurant. Bradshaw also recalled cars passing
11 by and people watching from the corner and across the street. Robinson confirmed the presence of
12 other people watching during the incident and searches.

13 23. Agent Nakamura was present during this entire stop, including during the search of
14 Lucas. Additionally, there were two other officers nearby while Lucas was being searched, and both
15 Mayer and Thurston testified that Oakland Police Officers Mack and Martinez were present from the
16 beginning of this traffic stop through the search of a house in Richmond.

17 24. Nakamura testified that Mayer did not tell him nor did he know of the reason for the
18 initial stop. Further he says he did not observe the searches. Neither Mack or Martinez were called
19 to testify at trial. Lt. Christopher Shannon, who conducted the Internal Affairs investigation of this
20 matter, testified that the police radio Computer Assisted Dispatch ("CAD") report showed that
21 Officers Mack and Martinez never called in their presence at the scene of the stop or at the
22 subsequent house search in Richmond.

23 25. The Court heard other credible testimony about the searches from Marty Robinson,
24 Rachel Lucas, Clarence Green, and Dymetrie Shaw.

25 26. Marty Robinson witnessed the searches of Lucas and Bradshaw, initially from the
26 northwest corner of 32nd and MLK, where the Cadillac was stopped. When Robinson heard Lucas
27 complain about his pants being pulled down he looked over and saw Lucas, who was handcuffed,
28 with his pants down to his knees. An officer told Robinson to look away, so he did. Robinson heard

1 more complaints from Lucas, looked over again, and saw Lucas with his boxer shorts down around
2 his knees. Robinson asked the officers why they were harassing them. Next, he heard an officer
3 order Bradshaw to pull his pants down, and Bradshaw protesting. Robinson saw Bradshaw with his
4 pants down, and then with his boxer shorts down too. Bradshaw was not handcuffed. Robinson
5 kept complaining to the officers; he was told to cross the street and that he would be arrested if he
6 persisted. The last thing he saw was Bradshaw with his shorts down, but did not see all of his body.
7 Robinson crossed to the SW corner of the street and called Lucas' wife and another friend and told
8 them that he was watching the police make her husband and Bradshaw take their pants down in
9 public. At the other side of 32nd Street, Robinson encountered Dymetrie Shaw, also known as
10 "Dilly." They had a brief conversation about how the police were mistreating Lucas and Bradshaw.

11 27. Rachel Lucas is Spencer Troy Lucas' wife from whom he was separated at the time of
12 this incident.. She has worked as a manager of a department store for two and a half years. She
13 received a call at the time of this incident from Robinson, who told her that the police were
14 searching Lucas and Bradshaw and "pulling their pants and underwear down." Robinson was
15 excited while he was talking to her, and it was clear to Ms. Lucas that the incident was still
16 happening as Robinson described it to her.

17 28. Clarence Green is a permanent part-time employee of the City of Oakland's Department
18 of Public Works. He briefly worked with Lucas and Bradshaw in the early nineties, but had had no
19 contact with them since then. At the time of the incident he was working for the City and driving
20 northbound on MLK. As he crossed 32nd Street, he saw police cars, and he recognized Bradshaw
21 with his pants down around his ankles. Wondering what was going on, Green pulled over and
22 continued to watch the events from his side view mirror. Bradshaw was not handcuffed. He also
23 saw Lucas in handcuffs. At his deposition Green could recall seeing Lucas with his pants down as
24 well, however at trial, he could not recall whether Lucas' pants were also down. Green observed a
25 lot of other people in the area at the time, including people going to work and kids going to school.
26 At trial one of Green's supervisors, Renay Jackson, was called to impeach Green's testimony and,
27 based on the Department's records, testify as to where and when Green was working at the time of
28 this incident. Jackson did not have any independent knowledge or recollection of these facts.

1 Having observed the testimony and demeanor of Green, the court finds him a credible witness and
2 the discrepancies between the record and Green's account do not justify discounting his testimony.

3 29. Dymetrie "Dilly" Shaw is an auto mechanic. He works on cars in the street in front of
4 his mother's house on 32nd Street. He was at home waiting for Lucas to come by to discuss some
5 auto work at the time of the incident. When he saw the front of Lucas' Cadillac parked on MLK at
6 the corner of 32nd Street, he started to walk over. As he was walking to the corner, he encountered
7 Robinson, who said something about how the police were "doing them wrong", referring to Lucas
8 and Bradshaw. As Dilly looked over toward the Cadillac, he could see Bradshaw standing at the
9 trunk with "his pants around his ankles." Bradshaw was not handcuffed, although there were police
10 around him. When Dilly saw this, he turned around and walked back home, because he was on
11 probation and "I didn't want to be involved with the police." He states he "wasn't trying to look at
12 his butt," but he could see Bradshaw's bare buttocks. Dilly could also see the top of Lucas' head as
13 he stood in the street behind the Cadillac, but the rest of Lucas' body was obscured from Dilly's
14 view by the open trunk.

15 30. Based on credible testimony, this Court finds by a preponderance of the evidence that
16 Lucas and Bradshaw were strip searched by or at the direction of Officer Mayer as described by the
17 plaintiffs. Although Officer Thurston denies recalling the search of Bradshaw, the evidence
18 indicates he conducted the search and the evidence is persuasive that Mayer was the officer who
19 either ordered Bradshaw's disrobing or was present and failed in his duty to intercede. In fact, there
20 was no other officer at the scene who could have searched Bradshaw. It is clear that it was not
21 Mayer or Nakamura.

22 31. After Lucas and Bradshaw were strip searched, Bradshaw was handcuffed and arrested
23 on an outstanding warrant. Lucas and Bradshaw were placed in the back of the police car assigned
24 to Officers Mayer and Thurston.

25 32. When searching Lucas, Officer Mayer found a house key in Lucas' pocket. Mayer
26 agrees he had found nothing illegal on Lucas. Nor was anything illegal found on Bradshaw as a
27 result of the search. Mayer had been informed by both Lucas and Lucas' parole agent, Agent
28 Bradley, that Lucas was "doing fine" on parole, he had about thirty days left on his parole time, and

1 he was currently homeless and sleeping at a motel or in his van as Bradley had witnessed in the past.
2 Mayer was also informed that Agent Bradley told another officer that “there wasn’t anything
3 specific with her that she needed [Lucas] to be taken into custody for.” Without having probable
4 cause to arrest Lucas for any crime, Officer Mayer led an investigation to try to find a parole
5 violation.

6 33. OPD Special Order No. 6071 required all officers to inform the Communications
7 Division by radio with their starting and ending odometer mileage whenever they transport a
8 prisoner anywhere. Officer Mayer acknowledges that he is required to follow this Special Order.
9 Mayer claims he was not required to radio in an “incidental movement” of a prisoner that is within
10 one block. Other than such an incidental movement Mayer admitted officers are supposed to tell the
11 dispatcher every location they go with a prisoner.

12 34. Officer Mayer drove Officer Thurston, Lucas, and Bradshaw to Lucas’ van which was
13 parked nearby. Other officers and Agent Nakamura met them there. Lucas and Bradshaw testified
14 that the van was parked approximately eight blocks away at W. MacArthur Ave. and Market Street.
15 Mayer testified the van was only about one block up the street on 32nd Street. Officer Mayer did
16 not inform the Communications Division of this movement of prisoners.

17 35. Officer Mayer searched Lucas’ van, and says he found no evidence that Lucas was living
18 there. Lucas says he told Mayer that his clothes and blankets were being cleaned at the “Wash and
19 Fold,” and showed Mayer a receipt for the wash. Lucas also testified that the van had a pull-down
20 bed. Mayer never opened the pull-down bed. Mayer did not document his search of the van
21 anywhere.

22 36. Next, Officer Mayer checked his department’s records and found that Lucas had once
23 been associated with a house at 828 34th Street. Mayer took Lucas and Bradshaw there along with
24 the other officers. Lucas informed Mayer that the house was an old girlfriend’s and he had not
25 stayed there for years. Officer Mayer tried to open the door to that house with the key he took from
26 Lucas and was greeted by the owner. He learned that Lucas did not live there. Officer Mayer did
27 not document this stop in any report. Mayer says he radioed in his transport of prisoners to 828 34th
28 Street, which should be reflected in the CAD report. However, the CAD report does not record any

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2 reference to this transport of prisoners or to 828 34th Street. Officers left that location, and Mayer
3 testified they drove directly to the jail at Fifth and Clay Streets, next to police headquarters.

4 37. Officer Mayer testified that, as required by Special Order No. 6071, he informed the
5 Communications Division of his car's mileage when they left the scene of the original traffic stop at
6 32nd and MLK, and again at the jail. The CAD report shows Mayer left the traffic stop location at
7 9:29 a.m. Mayer's beginning mileage was 60,369, and his ending mileage at the jail was 60,378.
8 Officer Mayer travelled nine miles with Lucas and Bradshaw in the back of his police car. Yet the
9 entire route that Officer Mayer says he took from the traffic stop, to the van, to the house, and to the
10 jail, is only 2.5 miles. Initially when asked about this discrepancy at trial, Mayer estimated that the
11 distance for that 2.5 mile route was nine miles. This is inherently unbelievable in view of the fact
12 that Mayer had been assigned to the PACT team for seven and a half years and had worked city
13 wide including this area of West Oakland. Later, when he was shown that the actual distance for the
14 route he said he took was 2.5 miles, Officer Mayer could not explain where he drove Lucas and
15 Bradshaw for the other 6.5 miles, and he speculated that possibly Lucas and Bradshaw were correct
16 when they testified that Mayer drove around West Oakland with them before taking them to the jail.

17 38. Officer Mayer and other officers acknowledged communicating with each other by cell
18 phone during this incident, rather than by police radio. They understood that radio transmissions
19 were monitored, recorded, and preserved by their department, unlike their cell phone
20 communications.

21 39. Officers Mayer and Thurston dropped off Bradshaw at the jail for booking based on the
22 outstanding warrant. Bradshaw does not challenge the lawfulness of his arrest on this warrant.

23 40. Officer Mayer arrested Lucas at 10:00 am for a parole hold/violation. The Consolidated
24 Arrest Report that Officer Mayer wrote says he was the arresting officer, and that the arrest took
25 place at 10:00 am. Mayer testified that Lucas was being processed at the jail for his arrest at that
26 time. There are no factual details contained in Officer Mayer's arrest report describing any probable
27 cause for his arrest of Lucas, despite instructions on that form to include a "complete probable cause
28 narrative." Officer Mayer agrees that it is elementary that an officer needs probable cause to make

1 an arrest. Yet, Mayer acknowledged at trial that he did not have probable cause to arrest Lucas at
2 10:00 am. In fact, Mayer acknowledged that Lucas had been detained for approximately two hours
3 before he had probable cause to arrest him.

4 41. By 10:00 am, Lucas had been strip searched and detained in Mayer's custody almost two
5 hours and handcuffed for most of that time. This Court finds that Lucas was arrested by 10:00 am,
6 and that there was no probable cause for his arrest at 10:00 am.

7 42. At 10:43 am, Officer Mayer and Thurston left the jail with Lucas to go to the City of
8 Richmond. The CAD report states that they were en route to "3800 MACDONALD AV APT 2 –
9 FOR PAROLE SEARCH." Officer Thurston testified they got the MacDonald address from a wants
10 and warrants check on Lucas. This was a previous address that Lucas had confirmed when he was
11 asked by the officers. Officer Mayer told the Court that he was not sure what that CAD entry meant
12 and that he does not recall going to the MacDonald location. Officer Mayer could not explain why
13 the address in Richmond he did go to with Lucas – 214 South 41st Street – did not appear anywhere
14 in the CAD report.

15 43. It took Officers Mayer and Thurston about 20 minutes to get from the jail to Richmond.
16 Officers Mack and Martinez, with Agent Nakamura, met them there. Officer Mayer drove Lucas to
17 214 South 41st Street in Richmond, which was a house where Lucas estranged wife and her aunt
18 lived. Lucas told the officers that he was separated from his wife and did not live at that address
19 with her. Officer Thurston told the Court that Lucas told him "he stayed there from time to time,"
20 but never said that he lived or resided there. Without a warrant, Mayer and other officers searched
21 the house. That search lasted from 30-60 minutes. At the end of that search, officers came out with
22 a brand new pellet gun, still in the box, that they found in a closet. Then officers informed Lucas
23 that he was under arrest for having a simulated firearm in what they decided was his residence.

24 44. Rachel Lucas confirmed that Spencer Troy Lucas was not living with her at 214 South
25 41st Street, and that the pellet gun was hers. She was not home during the search, but she came
26 home later to find her home had been "ramshaked" with mattresses moved and everything pulled out
27 of her drawers and storage bins, including her clothing and intimate apparel. Her credit cards were
28 pulled from her wallet and left out. Thinking she had been robbed, she called the Richmond police.

1 Officer Mayer admits leading the investigation and warrantless search of Ms. Lucas' home, and that
2 officers left no documentation or note behind to inform the occupants of the house that Oakland
3 police had searched it. Agent Nakamura testified that officers left that house "in a state of disarray."
4 Other than the state of disarray, the Oakland police left no trace that they had been to 214 South 41st
5 Street.

6 45. Officer Mayer drove Lucas back to the Oakland jail where he left him in the custody of
7 the jailers. Lucas testified that for the entire time he was in Mayer's custody, he was not allowed to
8 use the bathroom, despite his repeated pleas to do so. Lucas testified that he did not get back to the
9 jail until approximately 2:30 or 3:00 pm. Officers Mayer and Thurston provided no information in
10 any report about the details of their activities with Lucas and Bradshaw that day, and the CAD
11 reports do not indicate when officers arrived back at the jail with Lucas. Officer Mayer's CAD
12 report notes that a report number for Lucas was added at 12:30 pm. The CAD reports do not show
13 any record of the activities of Officers Mayer and Thurston between 10:46 am, when they were en
14 route to Richmond, and 3:33 pm when their unit was logged off.

15 46. Due to this arrest, Lucas was sent to a parole hearing and his parole was revoked. He
16 was sentenced to serve another ten months in prison. Eligible for half time, Lucas served five
17 months in prison.

18 47. The court notes that neither of the plaintiffs in this case filed a complaint with the
19 Internal Affairs office of OPD, although several years earlier Lucas had filed a complaint about
20 officer harassment.

21 48. This Court heard credible testimony concerning plaintiffs' emotional distress from these
22 events. Spencer Troy Lucas described how he felt "disrespected, downgraded," and "humiliated" by
23 being strip searched in the street in front of many people. Lucas explained why he felt "helpless"
24 and "kidnapped" when Mayer drove him around in handcuffs, not even letting him use the
25 bathroom. Lucas' emotion when testifying to these issues was very apparent. Rachel Lucas
26 explained that her husband has been very upset and emotional about these events. She adds, "He
27 sheds a tear every time he talks about it, which is often." This Court finds that plaintiff Lucas'
28 emotional distress suffered as a result of the vehicle stop, strip search, and his arrest is substantial.

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49. Plaintiff Kirby Bradshaw, who repeatedly was told to keep his head down while being forced to stand naked in the street, testified how that made him feel:

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“It was the most craziest thing that I've ever been through in my entire life. It's against the law to, you know, urinate on the street, so to be having your pants taken down by a law officer on the street, it was very humiliating. I feel I was back in the Jim Crow days. It was like I was very submissive. And it's terrorizing to me to this day....I felt that I had -- you can't say anything. And you -- there is nothing that you could say at the time. You are just submissive to whatever these officers say. And they don't never tell you what they are doing it for, or they don't give you any reason for pulling you over. [M]y sense of dignity was taken away at that time, and I feel that it shouldn't have been. I felt that it shouldn't have happened. I shouldn't have been having my pants down in the street like that. And I was very humiliated... [I felt] like a slave... [i]n the sense that I couldn't look up. In the sense that I was instructed to look down, and no -- I don't care if you are the police or not, nobody should have the authority to make you not look where you want to look....I felt that -- that that strip search was a threat to the rest of the community, who was ever able to see out there. I felt that the police were -- because they didn't really inspect me, I felt that they were doing that to show everybody else what they will do to them. That's [the] way I really felt, that this was now for a show for everybody, this is what we are going to come here and do to you, too....It was intimidation.” TT, 519:1-7; 536:1-537:16; 540:21-541:4.

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3 II. FINDINGS OF FACT - C 07-4179

4 Background Facts

5 1. Plaintiff Michael Holmes is 28 years old and lives at 9504 C Street in Oakland with
6 Geraldine Glenn Green, his mother, and his grandmother. He has lived at that address all his life.

7 2. Michael Holmes has been on parole since January 27, 2010.

8 3. Holmes was also on probation at the time of trial.

9 4. He was on probation with a four-way search clause in September of 2005.

10 5. Holmes' first contact with defendant Officer Richard Vass was in approximately 2004.

11 Officer Vass believes he has known Holmes since at least 2005 and that he has detained Holmes
12 "probably more than five times". He believes Holmes was selling drugs in the neighborhood and
13 arrested him once in July 2006 for this offense. On another occasion he arrested him on a warrant he
14 authored.

15 6. Mark Engram is Michael Holmes' cousin and frequently lives at 9504 C Street when he
16 has no where else to go.

17 7. Engram knows Officer Vass from previous years of coming in contact with him.

18 8. Engram served time in state prison for some period prior to his release on parole on
19 March 30, 2004. He was on probation before that date.

20 9. Engram was reincarcerated several times thereafter and then released on parole. He was
21 on parole in September, 2005 and at the time of one of the alleged incidents. He was in the custody
22 of the Alameda County Sheriff's Department at the time of this trial.

23 10. Engram believes his first contact with Officer Vass was in 2002 and thereafter he had
24 come in contact with him at other times in the neighborhood. Vass believes he has known Engram
25 since around 2004. He has detained Engram a number of times, probably about ten.

26 11. Officer Vass believes Engram is a street level dealer of narcotics.

27 12. Plaintiff Richard Leon Rix, Jr. was born on October 17, 1982.

28 13. He knows Michael Holmes and Mark Engram because they resided in the same

1 neighborhood.

2 //

3

4 14. At the time of the incidents in question here and at all relevant times Rix stayed at 92nd
5 and C Streets.

6 15. Vass has known Rix since approximately 2003. He had received information of citizen
7 calls to a drug hotline reporting that Rix was involved in the sale of drugs. He has never arrested Rix,
8 but has detained him about five times.

9 16. At the time of trial Rix was on leave from his job as an auto technician at Wal-Mart. He
10 was staying home and helping his mother and also he was recovering from a shoulder injury at that
11 time.

12 17. In 2005, Rix was on probation.

13 18. Officer Vass commenced his employment with the Oakland Police Department and
14 graduated from its Academy in 2000. After graduation he worked with a field training officer
15 observing narcotics arrests and learning the paperwork involved. He also worked in areas with
16 substantial drug activity. In November or December of 2002, Officer Vass was transferred to work
17 with Crime Reduction Team ("CRT") 6 in East Oakland. As part of Team 6, Vass was not "tied to
18 the radio", as is typical of a patrol officer. Vass was allowed to use his discretion about what work he
19 would do, and where he would do it, throughout the day, but remaining within his assigned area. His
20 narcotics experience was developed through surveillance activities, buy-bust operations, grand jury
21 indictment training, and work with the Alameda County Narcotics Task Force.

22 19. On Team 6, Vass sometimes communicated with other officers by radio, and sometimes
23 by cell phone. Vass understood that his cell phone communications were not recorded; radio
24 transmissions were. Vass also knew that information he communicated by cell phone would not
25 appear in CAD reports.

26 20. All of the specific locations where plaintiffs allege that Vass strip searched them are
27 within Vass' assigned area with Team 6.

28 21. Part of his duty on Team 6 was to conduct parole and probation searches. Vass has

1 performed several hundred parole and probation searches. Vass testified that a parole search is very
2 similar to a search incident to arrest.

3 //

4 22. Holmes testified to six different incidents on which Vass strip searched him.

5
6 Holmes and Engram 2004 Incident

7 23. The first of the instances about which Holmes testified he was strip searched occurred
8 sometime in 2004, but he does not recall the date. He and Engram were standing outside their house
9 at 9504 C Street.

10 24. Holmes testified that Vass drove up, handcuffed Holmes, and put him into the back of
11 Vass' police car. After about 5 minutes, Vass came and told Holmes to take off his shoes and socks,
12 and searched Holmes' socks. Holmes further testified that Vass took him off public property and into
13 an aisle next to Holmes' house, where Vass unbuttoned Holmes' pants and pulled them down to his
14 knees, and pulled down Holmes' boxer shorts; told Holmes to bend over; then spread Holmes'
15 buttocks and looked inside Holmes' buttocks while Holmes was bent over. Holmes testified "all my
16 privates" were exposed.

17 25. Finding no contraband, Vass put Holmes back into the police car for a short while before
18 releasing him.

19 26. Holmes did not report the incident because he didn't want the police to give him "extra
20 heat." This incident was not alleged in the complaints.

21 27. Vass denies strip searching plaintiff, although he admits "doing a probation search for
22 Holmes at 9504 C Street, his residence quite a while ago," "maybe '05, maybe '04, somewhere
23 around there, I would say." There is no Police Department documentation for this search.

24
25 Holmes, Engram, Rix Incident September 2005

26 28. The second incident occurred on approximately September 22, 2005, at about 8 or 9 a.m.
27 when Holmes and Engram decided to walk their dogs from the house on C Street to a park at 98th and
28 C Street, approximately one to two blocks away. Their friend Richard Rix joined up with them as

1 they walked to the park.

2 29. Holmes and Engram testified that they were both searched, handcuffed and placed in the
3 back of the police car. Rix testified that he was handcuffed and pat searched but left on the sidewalk.
4 Rix testified at trial that he was not strip-searched by Officer Vass on September 22, 2005, contrary
5 to what was alleged in the original complaint and First Amended Complaint (hereinafter referred to
6 as “complaints” and/or “FAC”).

7 30. Holmes and Engram each testified that Vass then took them one at a time to the side of a
8 house, between that house and another, and strip searched them, describing in detail the manner of
9 the searches. Each also stated that he saw the strip search of the other and described what he
10 observed.

11 31. Rix also attested to seeing the strip search of Holmes, after which he was pat searched
12 again, unhandcuffed and allowed to leave.

13 32. Ultimately, both Holmes and Engram were released, Officer Vass finding no contraband.

14 33. There are numerous inconsistencies in the plaintiffs’ recounting of the events of “that”
15 morning. Holmes testified that he was not sure how Vass was dressed, but then testified that Vass
16 was wearing blue latex gloves that came from the side of his jumpsuit pocket. Neither of the other
17 two plaintiffs mentioned anything about Vass wearing blue (or any other) latex gloves. In the
18 complaints, both the original and the FAC, plaintiffs alleged Vass performed these searches with his
19 bare hands.

20 34. Holmes testified that they were stopped by Officer Vass at about 9:00 or 10:00 in the
21 morning. Richard Rix testified that he saw Michael Holmes and Mark Engram with their pit bulls at
22 either 8:00 or 9:00 a.m. According to Engram’s cell phone record, the alleged incident happened
23 between approximately 10:00 and 11:00 in the morning. Engram testified the entire incident took
24 about an hour. Rix testified the entire incident took about 10 to 15 minutes.

25 35. Engram testified the dogs they were walking ran, after Vass approached them, and that
26 some of the Mexican neighbors they know came and got the dogs. Rix testified that Vass “was
27 concerned about the dogs” when he got out of the car, and tied the leashed dog to a gate.

28 36. Engram testified that Officer Vass pat-searched him, undid his pants, looked in his pants,

1 then put him in the car and that he placed Engram in handcuffs after searching him but before placing
2 him in the car. Rix testified that Officer Vass handcuffed Engram immediately, then handcuffed
3 Holmes and Rix. Rix also testified that Vass then pat-searched Engram, leaned him against the car,
4 and then pat-searched Holmes and himself. Holmes testified that right after he approached them,
5
6 Vass put Engram and him in handcuffs and then put him and Engram in the police car while Rix
7 remained standing on the sidewalk.

8 37. Rix testified that he complied with Vass' request to sit down on the sidewalk with his
9 legs crossed and waited and watched from that position. Although he remained on the sidewalk, Rix
10 did not see what Vass did with Mark Engram after he pat searched him. He did not see any further
11 search of Engram, and did not see Vass take Engram anywhere. A review of his deposition testimony
12 did not refresh Rix's recollection about whether Vass took Mark to the side of the house.

13 38. Holmes testified that he was in the police car about two minutes when Officer Vass had
14 him get out and walked him between two houses on C Street in the block just before Willie Wilkins
15 Park at 98th Avenue. Rix testified that Vass took them to the side of Michael Holmes' house.

16 39. Holmes testified that while he was being searched between the houses, three or four
17 other officers were on the sidewalk five to ten yards from where Vass' car was parked, looking
18 around and kicking up dirt. The other officers arrived after they were handcuffed and put in the back
19 of the police car. Two or three other cars arrived. Engram testified that after Vass finished searching
20 Holmes between the houses, Vass brought Holmes to the car and put him in handcuffs before putting
21 him back in the car. However, Holmes testified that he was handcuffed before he was placed in the
22 police car the first time, and never mentions that he was not in handcuffs when the search between
23 the buildings took place.

24 40. Holmes testified that after he returned to the car, Vass pulled Engram out and walked
25 him to the front of the car, unbuttoned his pants, moved the elastic waistband of his boxers away from
26 his body and looked down his pants. Engram testified that he was searched in front of the car before
27 being taken between the houses, where the same search was repeated, only "rougher." This included
28 Vass swiping his hand between his pants and his boxers.

1 41. Engram testified that several other officers and cars arrived on the scene by the time he
2 was returned to the car following his search between the houses. He vaguely testified that those
3 officers "...was probably there searching around, and stuff...maybe outside..." Rix, who was on the
4 sidewalk throughout most of the incident, makes no mention of other officers arriving on the scene.

5 //

6 42. If at least several other officers and police cars had arrived on the scene, one would
7 expect to find some documentation in the CAD and/or incident logs from running the names of these
8 three plaintiffs. However, Lt. Christopher Shannon testified that he had his office conduct a records
9 search and found no matches for this incident in the date range that included two weeks on either side
10 of September 22, 2005.

11 43. All three plaintiffs claim Officer Vass was driving alone in a police car. Sgt. Mork, Vass'
12 partner at the time, testified that he can think of no time during his partnership with Officer Vass,
13 which included September of 2005, when Vass was in a car by himself and Sgt. Mork pulled up to a
14 scene later in another car. When he and Vass were partners they rode together in the same car.
15 Engram testified that although he's not sure whether Mork arrived sometime after Vass, but it looked
16 like Mork was there.

17 44. Rix testified that this was the only time Officer Vass encountered the three of them
18 together. However, at deposition, he testified that the three had had numerous encounters with
19 Officer Vass while together.

20 45. Sgt. Mork testified that he has never seen Officer Vass with Engram, Holmes and Rix at
21 the same time, nor does he recall ever seeing Holmes and Engram together with Officer Vass.

22 46. The parties submitted the deposition of Johnnie Thornton in lieu of live testimony.
23 Thornton, who had deceased before trial, testified at his deposition that he saw part of the incident.
24 Thornton lived on C Street across from Elmhurst Park where he had resided for decades. Thornton
25 was born in 1920, and at the time of this incident he was 84 years old. Thornton used a wheelchair at
26 the time. Thornton recognized Mark Engram as someone who had grown up in the neighborhood,
27 but did not know Engram's name. Thornton was traveling on C Street in his wheelchair, headed
28 home, when he saw Mark Engram in the presence of Oakland police officers who searched Engram

1 “and opened his trousers up,” unzipping Engram’s trousers. Thornton testified that he saw Engram’s
2 underwear, then went into his house because he did not want any involvement with the police and
3 believed this was none of his business. He said Engram’s zipper was still open when he headed back
4 into his house.

5 //

6 47. Vass denies strip searching Holmes and Engram, because he was not working near that
7 location on the morning of September 22, 2005. Vass’ time sheet for September 22, 2005 shows he
8 started work at 2:00 p.m. and a CAD log shows he had his unit on at 3:19 p.m. His shift that date was
9 from 2:00 p.m. until midnight. No incidents in the CAD log for that date occurred on C Street.

10 48. Holmes and Engram on the other hand are unsure of the actual date, and stated that the
11 incident was within a week or two of Engram’s release from prison in mid-September. When it was
12 suggested that this event may have occurred on September 29, 2005, the record shows that Vass was
13 working alone on that date and his CAD log shows that at 9:13 a.m. he was at 1826 101st Avenue,
14 approximately one mile from the location of the strip searches of Holmes and Engram. The record
15 also shows that he had run Engram’s name on his computer later that day.

16 49. Defendants produced no written documentation, such as a field contact card or stop data
17 form, for any contact by Vass with Engram on the day Vass ran Engram’s name nor have they
18 produced any documents concerning Vass’ work schedule for any of the surrounding days. Vass
19 admits he “may have” had contact, again undocumented, with Holmes, Engram, and Rix on
20 September 29, 2005, but there is no documentation nor was any complaint filed with Internal Affairs
21 by Holmes or Engram. It is also clear that plaintiffs have continuously asserted that the date of this
22 event was September 22, 2005.

23 50. Engram also told OPD’s Internal Affairs office in an interview after the filing of this
24 action that his aunt and grandmother saw the incident. However, at trial he was uncertain and
25 thought perhaps his aunt saw it, but didn’t know if she saw it or not.

26

27 Holmes Spring 2006 Incident

28 51. The third incident occurred in the spring of 2006 in the parking lot of a shopping center

1 at 103rd Avenue and International Boulevard. This incident also was not alleged in the complaints.

2 52. When Holmes drove into the parking lot he testified that he saw Vass approaching and
3 stayed in his van. Vass ordered him out, handcuffed him and strip searched him. He put Holmes in
4 the back seat of the police car and searched Holmes' van. He then released Holmes and left. Holmes
5 testified that the incident lasted about 25 to 30 minutes.

6 53. Cedric Jackson, who at one time had resided at 9409 C Street and was a friend of
7 Holmes, was meeting him at the shopping center. He testified that he saw the strip search described
8 by Holmes. His testimony is questionable, since it is doubtful he saw the entire incident.
9 Furthermore, he believes that Officer Vass harassed him when he lived on C Street, including signing
10 an affidavit in support of a search warrant that resulted in a search of his premises. Therefore,
11 Jackson has reason to be biased.

12
13 Holmes July 2006 Incident

14 54. The fourth incident occurred on the evening of July 19, 2006, when Holmes was getting
15 his car washed in the area of 107th Avenue and Pontiac Street in Oakland.

16 55. Holmes testified that he had drugs on his person and when he saw Vass drive up he ran
17 and tossed the drugs. He then jumped into the backyard of a house and in doing so fell. The
18 homeowner's dogs began to bite his legs. Vass pepper sprayed the dogs and Sgt. Bernard Ortiz of the
19 Oakland Police Department arrived at about that time. Ortiz went to see the homeowner to get keys
20 to open a gate to the property. During that brief time of a minute or two, according to Holmes
21 testimony, Vass handcuffed him, pat searched him and then strip searched him. Holmes was taken to
22 jail after this incident.

23 56. Vass denies performing a strip search, stating that he performed a search incident to an
24 arrest and that he recalls finding some currency in Holmes' pocket, but doesn't remember much else.
25 He states that he would have searched around the waist and belt area and around the crotch area
26 through the exterior of Holmes' clothing, but that he did not strip search Holmes.

27 57. Vass prepared a report of the arrest, although another officer's name appeared on the
28 report.

1 58. Sgt. Todd Mork was on duty with Vass on this occasion. He saw Vass chase Holmes,
2 but did not have them in his vision at all times and did not see the arrest or any search. However, he
3 stated that it was less than five minutes between the beginning of the chase and when Vass returned
4 to the police car with Holmes in custody.

5 //

6 59. Sgt. Ortiz testified as to his appearance and activities on the scene. While he did not see
7 Vass and Holmes at all times, he did not see Vass perform a strip search, and did not believe there
8 was enough time when they were out of his sight during which a strip search could be performed.

9 60. Holmes made no complaint about a strip search and did not complain to Sgt. Ortiz about
10 such a search; nor did he complain at the time of booking or at any other time.

11 61. Here, too, Holmes testimony lacks credibility. In his complaints, both original and the
12 FAC, Holmes alleged that he ran from the officers because he “knew he had a warrant for his arrest
13 due to outstanding traffic tickets”. Compl’t. at ¶35; FAC at ¶33. He says nothing in his complaints
14 about being in possession of drugs and tossing them to avoid detection.

15 62. His depiction of what happened after he climbed the fence is also contradictory. At first
16 he said that Officer Vass jumped over the fence as soon as Holmes landed on the ground. Later, he
17 testified that he was on the ground for thirty seconds until Vass came to his location.

18 63. He denied pleading no contest to the trafficking charge, but his testimony is contradicted
19 by the court record.

20 64. His testimony about discarding the drugs is inconsistent with Sgt. Ortiz’ description of
21 what he saw.

22 65. Officer Vass and Holmes were alone only for 1 ½ minutes. That is not enough time to
23 conduct the search that Holmes describes.

24 66. The court finds that the officer was entitled to conduct a search incident to an arrest, but
25 that no strip search was conducted. In fact, Holmes’ demeanor at the time was inconsistent with his
26 having been strip searched.

27

28 Holmes February 2007 Incident

1 67. The fifth incident occurred on February 20, 2007, when Holmes was riding in the back
2 seat of a Yukon SUV on the way to an auto detailing shop. On International Boulevard between 94th
3 and 95th Avenues, Vass, who was alone in an unmarked police car, pulled the Yukon over. He
4 ordered Holmes out of the vehicle, handcuffed him and placed him in his patrol car. After ordering
5 the others out of the Yukon he searched it. Then he pulled Holmes out of the police car and searched
6 him, including according to Holmes testimony, performing a strip search which Holmes described.
7 After that he unhandcuffed Holmes and released him.

8 68. This testimony is wholly at odds with the testimony of the officers on the scene. Holmes
9 testified that the only officer present at the scene of this event was Officer Vass. However, Sgt.
10 Darrin Downum testified that he was present when the Yukon was stopped. Both Vass and Downum
11 testified that Downum was present for the entire search. This testimony is more believable since it is
12 highly unlikely that Sgt Downum would allow a single officer to confront three potentially dangerous
13 suspects. Sgt. Downum testified that Holmes was in his custody for the entire detention except for a
14 5 second period when he checked a cell phone ringing in the vehicle.

15 69. Downum was a street team supervisor at the time of this joint investigation. The
16 information giving rise to the stop was that a delivery of heroin was to be made. The target of their
17 investigation was a Salvador Ortega who was believed to be involved in shootings, murders and drug
18 dealing. The undercover team followed the Yukon and received communication about its
19 whereabouts and activities. Their instructions were not to arrest the occupants of the Yukon.

20 70. Under those instructions Vass made a regular car stop. Holmes was in the car. Vass got
21 Holmes out of the car and, finding out that he was on probation, he handed Holmes to Sgt. Downum.
22 Sgt. Downum pat searched Holmes to make sure he didn't have weapons and handcuffed him.
23 Downum stood with him on the sidewalk. Meanwhile, Vass was dealing with the other Yukon
24 occupants.

25 71. Downum is pretty sure that he handcuffed Holmes. Later Downum told Vass to hold
26 onto Holmes while he attended to a phone on the front seat of the Yukon because of an existing
27 wiretap on that phone.

28 72. According to Downum the entire search took less than ten minutes. During that time

1 Holmes was next to Downum except when Downum went into the vehicle to check on the phone
2 which took approximately five seconds.

3 73. The officers searched the occupants for weapons. Downum testified that he “absolutely”
4 did not see Vass strip search Holmes nor did he see him loosen Holmes’ pants.

5 //

6 74. In fact, Downum testified that if he had seen Vass conducting a strip search, he would
7 have taken immediate corrective action, stating that, “We didn’t want to find anything, we didn’t
8 want to do any of that. That wasn’t necessary for our task at hand at all.” They did not want to find
9 any narcotics because they would have to make an arrest which would interfere with their
10 investigation.

11
12 Holmes August 2007 Incident

13 75. The sixth incident, which was not alleged in the complaints, Holmes claims occurred in
14 August 2007, when Vass stopped him near the residence of his uncle Michael Douglas at 2926 109th
15 Avenue and MacArthur Boulevard in Oakland. Holmes, who was returning from a nearby Church’s
16 Chicken, testified that Vass jumped out of the police car’s passenger seat and asked Holmes, “this is
17 where you’ve been?” He then handcuffed Holmes and searched him.

18 76. According to Holmes and Douglas, Vass strip searched Holmes. Douglas testified that
19 he saw Vass unbuckle Holmes’ belt and pants and search around his waist. He said he saw Vass look
20 inside Holmes’ pants and that “[Y]ou could see him just go all the way down and see his underwear
21 and everything.”

22 77. After the search Vass put Holmes in the police car, took his keys and found Holmes’ car
23 which he searched, emptying the contents onto the street. He then pulled Holmes out of the police
24 car, unhandcuffed and released him.

25 78. The court notes that both Holmes and Douglas have reasons to be biased since both of
26 them were the subjects of search warrants authored by Vass. OPD has no record of this incident.
27 Despite the alleged event occurring at about the time of the filing of the original complaint and about
28 one month after the filing of the FAC, no mention is made of it in either complaint.

Engram 2007 Incident

79. Mark Engram testified to an incident that involved only him and occurred on January 16, 2007, when he was walking on Elmhurst Street around the corner from where he lived. Officers Vass and Mork drove up in their police car and Vass ordered Engram to “come here”. Engram testified that Vass told him to open his mouth and Vass inspected it. He then grabbed Engram and pushed him against the back of the police car and kicked his legs open. He then pat searched Engram, grabbed Engram’s genitals and pulled down his clothes, strip searching him.

80. A neighbor, Percy Jones, testified to observing this.

81. After the search Engram was released.

82. Engram’s description of the search at Elmhurst and D is vague and incomprehensible. He states that he made a note that the search occurred on January 16, 2007. However, the more persuasive evidence is that Officers Mork and Vass were working the entire date on another assignment in a different part of the city.

83. Jones’ description of the search contradicts the description given by Mr. Engram. He is also biased toward Vass and believes him to be “a white supremacist” and a “legal killer with a gun.” He disliked Officer Vass because he was “gung ho” about combating the drug trade in the neighborhood. Jones said he did not care about drug dealing in his neighborhood. The court does not find Jones a credible witness.

Rix November 2005 Incident

84. Robert Rix testified that in late October or early November 2005 he was driving on C Street when he saw Officer Vass driving toward him and that he determined from Vass’ look that Vass wanted him to pull over. Rix did so, pulling over in the area of 92nd Avenue and C Street.

85. Rix exited his vehicle and in response to Vass’ inquiry told them there wasn’t “anything” in his car. Vass handcuffed him, ordered him to spread his legs and pat searched him. Then, according to Rix’s testimony, Vass strip searched him after which he put Rix in the back of the patrol car and searched Rix’s car. Rix testified that he was allowed to get out of the patrol car, but that he was then strip searched again before he was unhandcuffed and released.

OPD and Officer Policies and Practices

86. The officers, including sergeants and a lieutenant, have testified that the Police Department requires that forms called stop data forms be completed for all contacts, stops or

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detentions. Field contact cards may be created for detentions, but are not required. Arrest reports are to be completed for all arrests. Documentation might not be produced for consensual encounters.

87. The purpose of the stop data forms was to determine whether the Oakland Police Department was engaging in racial profiling and officers were supposed to fill them out for any vehicle, walking stop, and/or bicycle stop. The forms are turned into the Department where the supervisor reviews them for completeness, signs them and places them in a report writing receptacle. There have been problems on occasion with failure to complete the forms or turn them in; on other occasions some forms that were turned in had been lost.

88. Sgt. Downum testified that he is familiar with stop data forms. They are prepared when a self-initiated stop is made. As a supervisor, he reviews them and signs them. In 2005, he signed them, and reviewed them for completeness. He gave them to a lieutenant who kept them in a box under his desk. As a field supervisor, he would review forms to determine if the forms turned in were consistent with the officer's workload. He would take corrective action if an officer was making stops and not completing forms. He would also take action if the officer was not making stops.

89. When he supervised Officer Vass, the number of stop data forms he turned in was consistent with his workload.

90. A field contact card and a report were prepared in connection with the stop of the Yukon on February 20, 2007. The field contact card was produced. The report, according to Sgt. Downum, was turned over to the DEA and no copy retained by OPD.

91. Stop data forms and field contact cards were not produced for any of the other stops or detentions alleged in this case.

92. When asked at trial whether or not he was allowed to strip search someone in the field simply because they are on probation or parole, Vass testified he "always believed that you needed a

1 little something more.” When asked about that same subject at his deposition on January 14, 2009,
2 Officer Vass answered that he was not sure and he did not know whether he was allowed to conduct a
3 strip search of a parolee in the field based solely on that person's status as a person on parole. Vass
4 could not recall any written policies or any training he had ever received on that issue.

5 //

6 93. Officer Vass is required by his department to know and obey all laws, as well as all of
7 his department's rules, policies, and orders. Vass was aware of OPD Rule 314.36, which states: “In
8 the event of improper action or breach of discipline, it will be presumed that the member or employee
9 was familiar with the law, rule or policy in question.”

10 94. The OPD's 2004 strip search policy governed any strip search Officer Vass performed
11 after May 27, 2004. Officer Vass was trained on the policy in 2004 by Captain, now Deputy Chief,
12 Jeffrey Israel. The 2004 strip search policy defined “strip search” as “a search that requires a person
13 to remove or arrange some or all of his or her clothing so as to permit a visual inspection of the
14 underwear, brassiere, breasts, buttocks, or genitalia of such person.” Officer Vass' understanding of
15 that term was consistent with the policy.

16 95. The 2004 strip search policy explained that a “strip search” is more intrusive than, and
17 different from, a “full body search” of a person on probation or parole. While that policy allows field
18 strip searches under certain circumstances, the policy also prohibits any visual or physical body
19 cavity search in the field.

20 96. Officer Vass testified that the mechanics of a probation or parole search of the person is
21 the same as a search pursuant to arrest and consists of touching “pretty much” the entire body through
22 the subject's clothing including the waist, groin and buttocks areas. Sgt. Mork testified similarly.
23 Vass described the manner in which he conducts parole or probation searches and searches incident
24 to arrest. It is probable that such a search would detect the existence of contraband or weapons in a
25 suspect's private parts. Officer Vass testified that he routinely attempts to have the suspect recover
26 the drugs and that suspects usually comply.

27 97. Vass stated that it has been his practice to only perform field strip searches when he has
28 probable cause to believe the person may be hiding contraband in their underwear.

1 98. At trial, Vass was unsure about whether he was allowed to strip search a person who was
2 on probation or parole where such person was merely detained and not arrested. At his deposition,
3 Vass testified unequivocally that he was not allowed to conduct a strip search in the field of a person
4 who was merely detained. The 2004 strip search policy only refers to field strip searches “incident to
5 //
6 arrest.” While at trial he thought the policy may allow him to do a field strip search of a detainee,
7 after reviewing the policy he could not find support for that proposition.

8 99. Officer Vass admits he has performed possibly ten or more strip searches in the field.
9 Once he did so at the side of a house. He also may have been present when other officers conducted
10 on-the-street strip searches, but cannot recall any details. Vass said he only recalls visually observing
11 a person’s anus in the field once and acknowledges to “somewhat by default” this may have been a
12 forbidden visual body cavity search.

13 100. Officer Vass denied ever having a complaint about a strip search sustained against him.
14 When shown documentation about the Oakland Citizen’s Police Review Board’s (CPRB) misconduct
15 findings in a complaint filed on behalf of Dynami McCree who Vass strip searched at the front of a
16 house, Vass acknowledged that the CPRB did sustain the complaint against him for conducting a strip
17 search in public. Officer Vass was never disciplined or provided supplemental training as a result of
18 that sustained strip search charge.

19 101. Officer Vass was required to write an arrest report for every person he arrested. He
20 was required to ensure that a Field Contact Card was filled out for every detention in which he was
21 involved. And, Officer Vass was required to ensure that a Racial Profiling Stop Data Collection
22 Form was filled out and turned in to his supervisor for every vehicle, walking, or bicycle stop during
23 his shift. A parole search should generate, at a minimum, a Field Contact Card and a Stop Data
24 Form. Officer Vass assumes his department requires him to fill out field contact cards for officer
25 accountability, so his department knows what its officers are doing on the street. Officer Vass says
26 he tried to fill out this required documentation for every stop.

27 102. Officer Vass denies that he has ever performed a strip search of Holmes, Engram or Rix
28 at any time.

1 103. Sgt. Downum also testified that when he supervised Officer Vass, he observed him in
2 the field on a daily basis. He never saw him act in a way he felt to be unprofessional. He has never
3 seen him conduct a strip search in the field.

4 104. Lt. Christopher Shannon of OPD testified that OPD's law enforcement databases for
5 the period including and around the dates asserted in this case were checked to determine whether
6 warrant checks on any of these three plaintiffs had been run or whether their names had been run
7 through the databases. The response was negative.

8
9 Summary of Facts and Conclusions

10 105. The court is not persuaded by a preponderance of the evidence that the strip searches
11 complained of by Holmes, Engram and Rix occurred. A number of factors convince the court that
12 each of these plaintiffs is lacking in credibility and candor.

13 106. First of all, there is no evidence that any of the incidents complained of were reported
14 to Internal Affairs of OPD. Although there is evidence of other persons having made such
15 complaints. The first that Officer Vass or the Department ever learned of these numerous alleged
16 violations was when the complaint in this action was filed, firstly on August 15, 2007, and then with
17 a First Amended Complaint on September 17, 2007.

18 107. Even then these three plaintiffs complained of only five specific instances of strip
19 searches. Thereafter, they added others about which they were permitted to testify for evidentiary
20 purposes only, but not to support further claims. The plaintiffs are quite elaborate in their articulation
21 of the details of each incident, but their testimony is not consistent with the allegations of the
22 complaints, with their depositions and with each others recitation of them.

23 108. For example, the first incident which was testified to at trial involved Holmes and
24 Engram. Yet, they could only point to the incident occurring sometime in 2004. Given the
25 humiliation and anguish they claim to have suffered neither could point to even a season, let alone a
26 month, when the event occurred. And, despite alleging other strip searches in the complaints filed in
27 this action, the 2004 event was not mentioned.

28 109. The event originally alleged to have occurred on September 22, 2005, at approximately

1 8-9 a.m., turned out to possibly have occurred at some other time, if at all. The court is not persuaded
2 by a preponderance of the evidence that it occurred. The complaints and other papers filed by
3 plaintiffs in this action uniformly refer to the incident occurring on September 22, 2005. Yet, when
4 confronted at trial with the fact, which this court finds persuasive, that Officer Vass, the alleged
5 offender in all of these searches, was not on duty until the afternoon of that day, the plaintiffs waffled
6 and began suggesting that it may have occurred on September 29, 2005. In the end, they were not
7 sure when it occurred.

8 110. The plaintiffs have testified to several searches of their buttocks areas. In the complaint
9 Vass is alleged to have performed some of these searches with his bare hands. Yet, on at least one of
10 these occasions, the January 2007 incident with Engram, Engram testified to the contrary and says
11 Vass wore gloves. There are numerous other inconsistencies in their own testimony and among
12 themselves. Furthermore, plaintiffs offer no plausible explanation why Officer Vass would
13 unnecessarily subject himself the unpleasantness of a strip search performed in the manner they have
14 described, particularly since discipline was a possible consequence.

15 111. The court is persuaded that the OPD records discredit many of plaintiff's accounts.

16 112. The incident involving the Yukon is also discredited by several officers' accounts,
17 including that of Sgt. Downum, as well as the records of OPD. First of all, Officer Vass had probable
18 cause to stop the vehicle for a traffic violation. The search of Holmes in the 9400 block of
19 International was pursuant to standard drug investigation procedures. The court concludes that given
20 the nature of the ongoing investigation, the purpose and location of the stop, the time involved and
21 the other activities occurring at the scene that no strip search occurred or could have occurred.
22 Furthermore, there was not enough time to perform such a search and no reason for such a search is
23 suggested by the record.

24 113. Holmes and Engram were on probation or parole at the time of the searches in this case
25 and, therefore, were subject to parole or probation searches. The searches conducted, to the extent
26 they occurred, were consistent with the parameters of parole or probation searches. The court finds
27 there were no strip searches at any of the times claimed.

28 114. One of the searches alleged occurred when Vass arrested Holmes at 106th and Pontiac.

1 He was thus entitled to conduct a search incident to arrest. He did not, however, conduct a strip
2 search on that occasion, contrary to Holmes' testimony.

3 115. Incidents that were not alleged in the complaint do not assist plaintiff Holmes. If these
4 incidents had actually occurred, there is no reason that plaintiff would not have included them in one
5 or both of the complaints.

6 116. The court need only determine whether plaintiffs have shown by a preponderance of
7 the evidence that these strip searches occurred. The court concludes that they have failed in this
8 effort. Nonetheless, the motivation for creating them out of whole cloth is of concern. Whether this
9 is attributable to news accounts of other cases, whether legitimate searches that did take place on
10 some occasions have been magnified into strip searches, or for whatever reason, the court finds that
11 plaintiffs' testimonies are strained and unbelievable.

12 117. In several of these instances there is no record of Officer Vass' contact with any of the
13 plaintiffs. While there were times when he stopped them, conversed with them casually, or
14 conducted a probation or parole search (because he knew that one or more of them was on probation
15 or parole at the time), there is no credible evidence that he strip searched them.

16 118. The court finds that to the extent there were witnesses who testified that they observed
17 strip searches, their testimony has credibility problems. One is a relative; others are friends or
18 neighbors who have their own antipathy to or negative experiences with the police.

19 119. What also persuades the court of this evaluation of the credibility of plaintiffs is the
20 accumulation of allegations that appear to have been elaborated on during their testimony. Rix, in
21 particular, seemed to relish having an audience at trial listening to his recounting of events and
22 embellished them beyond credulity.

23 120. Sgts. Mork, Ortiz and Downum were present at some of the incidents. Their accounts
24 were credible and more consistent with the time frames involved and the facts that are established
25 independently.

26 121. Therefore, the court finds that these three plaintiffs have failed to establish by a
27 preponderance of the evidence that they were strip searched on any of the occasions they have
28 alleged in their complaints or at trial.

1 122. While OPD officers should do a better job of recording and reporting stops, detentions
2 and searches, the court does not find by a preponderance of the evidence that the strip searches
3 occurred in the manner and times described by plaintiffs. Therefore, Officer Vass did not violate the
4 Fourth Amendment rights of these three plaintiffs.

5 //

6
7 CONCLUSIONS OF LAW

8 I. The Applicable Law of Search and Seizure

9 Jurisdiction in these actions is premised on section 1983 of Title 42 U.S.C. which provides
10 that:

11 “Every person who, under the color of any statute...subjects any citizen of the United
12 States or other person within the jurisdiction thereof to the deprivation of any rights,
13 privilege, or immunities secured by the Constitution and law, shall be liable to the party
injured in an action at law, suit in equity, or other proper proceeding for redress.”

14 This section is not itself a source of substantive rights, but merely provides the vehicle by which
15 federal rights conferred by the United States Constitution or federal statutes may be vindicated. In
16 this case plaintiffs’ claims are founded on the Fourth Amendment to the Constitution, which is
17 applicable to the states through the Fourteenth Amendment. The court also exercises supplemental
18 jurisdiction over the state law claims by reason of 28 U.S.C. section 1367.

19 The Fourth Amendment as pertinent here guarantees: “[t]he right of the people to be secure
20 in their persons...against unreasonable searches and seizures, shall not be violated.” U.S.Const.
21 amend IV. Plaintiffs claim they were subjected to unreasonable searches because they were strip
22 searched in public places without probable cause and in violation of federal and state law interpreting
23 the Fourth Amendment. Plaintiffs Lucas and Bradshaw claim that in the first instance they were
24 subjected to an unlawful vehicle stop which precipitated their detention and strip searches.

25 Plaintiffs in both actions bear the burden of proving their claims by a preponderance of the
26 evidence. In order to establish their strip search claims each plaintiff must show that (1) a right
27 secured by the Constitution and laws of the United States, namely, the Fourth Amendment right to be
28 free from an unreasonable search of his person, was violated; (2) that he was searched by a strip

1 search of his person; (3) that the search was conducted by a person acting under the color of law; (4)
2 that the person conducting the search acted intentionally; and (5) that the search was unreasonable.

3 With respect to the unlawful vehicle stop, plaintiffs Lucas and Bradshaw must each show
4 that (1) his Fourth Amendment right to be free from unreasonable seizure was violated in that the
5 vehicle stop was unlawful; (2) that the stop was conducted by a person acting under color of law; (3)
6 that the person stopping the vehicle was acting intentionally, (4) and that the stop was unlawful.

7 Plaintiffs need not prove that the defendants acted with the intent to violate their rights, only
8 that the acts themselves were intentional. The parties have stipulated that each of the officers in these
9 cases was acting under color of law. If the plaintiffs prove the alleged searches occurred, the conduct
10 would necessarily be intentional. And, of course, the stop of Lucas' vehicle was intentional. The
11 question is whether any of the officers charged in these complaints deprived any of the plaintiffs of
12 the particular rights they assert -- either the right to be free of an unreasonable search or the right to
13 be free of an unreasonable seizure or stop. The court treats separately each of the plaintiffs, each of
14 the incidents, and each of the officers alleged to be involved.

15

16 II. The Stop, Detention and Seizure of Lucas and Bradshaw

17 The starting point with respect to the claims of Lucas and Bradshaw is the vehicle stop.
18 There is no question that at the time defendant officers did not know the identity of any of the three
19 passengers in the car. They did not know whether any of them were on probation or parole. The
20 court has already found that they did not have an articulable basis for the stop. In fact, none of the
21 officers could agree or remember why the car was stopped, only that there was some vehicle code
22 violation. No record was made of it; no citation was issued; and they offered no reason for the stop at
23 the time of making it.

24 Before addressing the specifics of the stop and the strip searches in this case, the court looks
25 to the background of seizures and searches in general. A stop of an automobile for a vehicle code
26 violation or for other violations of the law is often referred to as an investigatory stop or temporary
27 detention. *Liberal v. Estrada*, 632 F.3d 1064, 1078 (9th Cir. 2011)(citing *Terry v. Ohio*, 392 U.S. 1
28 (1968)). In connection with such a stop a very limited type of search may be conducted, commonly

1 referred to as a “frisk” or pat down for weapons. *Id.* A stop of a vehicle is a seizure within the
2 meaning of the Fourth Amendment. *Whren v. United States*, 517 U.S. 806, 809-10 (1996)(citing
3 *Delaware v. Prouse*, 440 U.S. 648, 653 (1979)). Such a stop is reasonable when there is probable
4 cause to believe a traffic violation has occurred, *Liberal v. Estrada*, 632 F.3d at 1078, or reasonable
5 suspicion to believe that the “motorist is engaging in illegal activity.” *Id.* at 1077. Probable cause is
6 necessary for an arrest; reasonable suspicion suffices for an investigatory stop or temporary
7 detention.

8 Probable cause is “more than bare suspicion: Probable cause exists where ‘the facts and
9 circumstances within their (the officers’) knowledge and of which they had reasonably trustworthy
10 information (are) sufficient in themselves to warrant a man of reasonable caution in the belief that’ an
11 offense has been committed.” *Brinegar v. United States*, 338 U.S. 160, 175-77 (1949)(quoting
12 *Carroll v. United States*, 267 U.S. 132, 162 (1925)). Reasonable suspicion requires “specific,
13 articulable facts which, together with objective and reasonable inferences, form the basis for
14 suspecting that the particular person detained is engaged in criminal activity.” *United States v.*
15 *Lopez-Soto*, 205 F.3d 1101, 1105 (9th Cir. 2000); *see also United States v. Rojas-Millan*, 234 F.3d
16 464, 468-69 (9th Cir. 2000). Such facts may include an observation of an actual vehicle code
17 violation, a reasonable basis for believing that the vehicle is stolen, contains contraband or was used
18 in criminal activity. The only asserted basis here was some type of traffic violation and that basis has
19 been negated by the credible evidence in this case.

20 A vehicle traffic stop is not only a stop of the driver, but also of the passenger. If it is
21 unlawful as to the driver, it is also unlawful as to the passenger. *Brendlin v. California*, 551 U.S.
22 249, 256-63 (2007). This was not a new concept introduced in *Brendlin*, but was extant in the Ninth
23 Circuit since the time of *United States v. Twilley*, 222 F.3d 1092 (9th Cir. 2000), and in nearly all the
24 federal circuits as noted in *Brendlin*, 551 U.S. at 258-59.

25 For the reasons set forth above the court finds that certainly there was no probable cause and
26 there was no reasonable suspicion for the traffic stop. Thus, the traffic stop in this case was unlawful
27 and a violation of the Fourth Amendment rights of Lucas and Bradshaw.

28 The court notes that if this had been a lawful traffic stop an officer could require that not only

1 the driver, but also the passengers, exit the vehicle and could make inquiries of the passengers.
 2 *Arizona v. Johnson*, 555 U.S. 323,____, 129 S.Ct. 781, 786-87 (2009). Under these circumstances the
 3 officer could also conduct a frisk for weapons if he had a reasonable belief that the passenger was
 4 armed and dangerous. *Id.* at 784 (capturing the “combined thrust” of the Court’s earlier decisions in
 5 *Pennsylvania v. Mimms*, 434 U.S. 106 (1977); *Maryland v. Wilson*, 519 U.S. 408 (1997), and
 6 *Brendlin v. California*, 551 U.S. 249 (2007)). The “investigatory stop must be lawful” and the
 7 //
 8 officer must “reasonably suspect that the person stopped is armed and dangerous.” *Liberal v.*
 9 *Estrada*, 632 F.3d at 1079 (quoting *Arizona v. Johnson*, 129 S.Ct. at 784).

10 However, the officers parlayed this unlawful stop into an inquiry about whether any of the
 11 occupants were on parole. But for the unlawful stop, they could not have made this inquiry and set in
 12 motion the events that occurred thereafter. California cases, published and unpublished, are legion
 13 where officers have stopped vehicles for failing to obey a stop sign, lack of a license plate or tail
 14 lights, even failure to fasten a seat belt, and then asked the driver or occupants whether they are on
 15 parole. This practice has been accepted as being within the parameters of a standard parole search
 16 clause and the Fourth Amendment. However, the method employed here steps outside those bounds
 17 because there was no lawful stop.

18 19 III. The Prolonged Detention of Lucas

20 Before taking up the question of the searches, the court takes one detour in its analysis of the
 21 claims at issue here to traverse the detour taken in the detention of Lucas. A “prolonged detention
 22 may well be a more serious exploitation of an illegal arrest than a short one.” *Dunaway v. New York*,
 23 442 U.S. 200, 220 (1979)(Stevens, J., concurring); *see also United States v. Luckett*, 484 F.2d 89, 90-
 24 91 (9th Cir. 1973)(condemning as unreasonable continued detention of cited jaywalker to check for
 25 warrant). *Terry v. Ohio* speaks to this issue, noting a stop or search which is “reasonable in its
 26 inception may violate the Fourth Amendment by virtue of its intolerable intensity and scope”. 392
 27 U.S. at 17 (citing to the Court’s earlier holdings going back to 1931; citations omitted). In 1983, the
 28 Court revisited the issue of prolonged or investigative detentions and held that “an investigative

1 detention must be temporary and last no longer than is necessary to effectuate the purpose of the
2 stop.” *Florida v. Royer*, 460 U.S. 491, 500 (1983)(plurality opinion); *see also United States v.*
3 *Gross*, 624 F.3d 309, 320 (6th Cir. 2010)(quoting *United States v. Lockett*, 484 F.2d at 90-91); *Gilles*
4 *v. Repicky*. 511 F.3d 239 (2^d Cir. 2007). Again, in 1985 the Supreme Court in *United States v.*
5 *Sharpe*, 470 U.S. 675, 686 (1985), pointed out the need for diligence in pursuing an investigation
6 after an investigatory stop. This court finds that the detention of Lucas bears out Justice Stevens’
7 caution.

8
9 Unlike the foregoing cases where there was a lawful basis for a stop, the officers here did not
10 effect a lawful stop; they did not issue a citation; and they do not now offer a valid reason for the
11 stop. Even after a preliminary inquiry the officers knew there was no criminal activity afoot. The
12 only question was Lucas’ current residence. A conversation with Agent Bradley, Lucas’ Parole
13 Officer, confirmed that he was homeless and generally had been living at motels. Instead of
14 arranging for him to meet with the Parole Officer and clarify his living location, the officers drove
15 him around Oakland and then to a nearby city looking for a residence and evidence of a violation.
16 This only exacerbated an already unlawful situation compounding its unlawfulness. They were not
17 effectuating the purported purpose of the stop. Certainly an unlawful stop cannot give rise to a period
18 of detention longer than would be justified by a lawful one. Judge Illston of this court, speaking of
19 seizures and searches of parolees, aptly noted that “[i]t is not only the initial search or seizure that
20 must be reasonable, but also any subsequent detention.” *Turner v. Craig*, No. C 09-03652 SI, 2011
21 WL 2600648 at *8 (N.D.Cal. June 30, 2011). This court agrees and finds that the prolonged
22 detention of Lucas was a violation of his limited Fourth Amendment rights as a parolee.

23 In fact, given the length of Lucas’ detention and the transporting of him around town and to
24 another city, somewhere in this continuum the detention became an arrest before he was actually
25 arrested after the search of the house in Richmond. The court need not fix the exact moment this
26 detention became an arrest, but by the time the officers arrived at the OPD facility and dropped off
27 Bradshaw enough time had elapsed for the detention to effectively become an arrest. Certainly,
28 during the period from leaving the facility and traveling to Richmond the detention became an arrest.

1 And, it was an arrest without probable cause. Officer Mayer, himself, agreed that the requirement of
2 probable cause is “elementary,” and essentially admitted that at or about 10:00 a.m. the records show
3 Lucas was arrested, but probable cause was lacking at that time. See Findings of Fact at ¶40, *supra*.

4 Having determined that defendants violated the Fourth Amendment rights of Lucas and
5 Bradshaw by an unlawful stop, all that flowed therefrom is a continuum of those violations, including
6 the detention, the strip searches and the prolonged detention in search of a parole violation for Lucas
7 that followed. Nothing that occurred after the unlawful stop and seizures cured their illegality or
8 intervened in the continuum.

9
10 IV. The Effect of After-Acquired Knowledge

11 Another principle of search and seizure law intersects with Lucas status as a parolee and with
12 Bradshaw’s status as the subject of a warrant. The officers have testified that at the time of the stop
13 they did not know the identities of the occupants of the car or whether they were on parole or
14 probation. The California Supreme Court has held that a parole search conducted without prior
15 knowledge that the subject is a parolee is not a reasonable search under the Fourth Amendment. *See*
16 *People v. Sanders*, 31 Cal.4th 318, 331-332 (2003)(noted approvingly in *Samson v. California*, 547
17 U.S. 843, 856 n.5 (2006)). The same rationale applies to a stop or seizure of a person subject to a
18 warrant without prior knowledge of that status. This Circuit summed up its agreement with these
19 principles, holding that “police officers cannot retroactively justify a suspicionless search and arrest
20 on the basis of an after-the-fact discovery of an arrest warrant or a parole condition.” *Moreno v.*
21 *Baca*, 431 F.3d 633, 641 (9th Cir. 2005), *cert. denied*, 547 U.S. 1207 (2006). Similarly, after-
22 acquired knowledge that a person is on parole and subject to a parole search condition cannot justify
23 an unlawful seizure, in this case a traffic stop. *See, e.g., United States v. Johnson*, 256 F.3d 895 (9th
24 Cir. 2001)(en banc); *United States v. DiCesare*, 765 F.2d 890 (9th Cir.), *amended on other grounds*,
25 777 F.2d 543 (1985). Most recently, the Sixth Circuit held that “where an officer engages in an
26 illegal stop and then discovers through his own investigation or prompting that the individual or
27 individuals he has illegally stopped have outstanding warrants, the evidentiary fruits of the
28 subsequent arrest are tainted as fruit of the poisonous tree and must be suppressed.” *United States v.*

1 *Gross*, 624 F.3d at 321-22. The principles enunciated in these cases makes the stop and the
2 subsequent actions of the officers even more problematic.

3
4 V. Qualified Immunity for Stop and Detention

5 To the extent that the officers assert qualified immunity for the stop, such assertions are
6 plainly without merit. Probable cause has been a bedrock principle of our system of justice since the
7 adoption of the Fourth Amendment and was defined as early as the time of Chief Justice Marshall's
8 decision in *Locke v. United States*, 7 Cranch 339 (1813). The distinctions between probable cause
9 and reasonable suspicion evolved from *Terry v. Ohio*, 392 U.S. 1 (the germinal stop-and-frisk case),
10 through *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975 (involving vehicle stop to investigate
11 presence of illegal aliens), to *Delaware v. Prouse*, 440 U.S. 648 (1979)(stop of automobile for vehicle
12 code violation), to the present day plethora of vehicle stop cases. So, it was recently stated by this
13 Circuit that "[i]t has been settled law since the 1970's that in order for a police officer to initiate an
14 investigatory stop of a motorist, there must at least exist reasonable suspicion that the motorist is
15 engaging in illegal activity." *Liberal v. Estrada*, 632 F.3d at 1077 (quoting *Bingham v. City of*
16 *Manhattan Beach*, 341 F.3d 939, 948 (9th Cir 2003)(history omitted)). In view of this history, it was
17 clearly established law at the time of the vehicle stop in this case that at least reasonable suspicion
18 was required in order to lawfully effect a stop. Having found no credible evidence to support a
19 lawful stop for a vehicle code violation, the court finds there was no reasonable suspicion. Nor did
20 the officers know or have a reasonable basis to believe that any of the occupants of the vehicle were
21 on parole or probation.

22 In addition, the law was also clearly established at the time of these events that prolonged
23 detentions or detentions that go beyond the scope of the reasons for the stop are unreasonable under
24 the Fourth Amendment. *See Terry v. Ohio*, 392 U.S. at 18(citing to holdings in 1931, 1948 and
25 1957); *see also Beier v. City of Lewiston*, 354 F.3d 1058, 1065 (9th Cir. 2004) ("[T]hat a police officer
26 may arrest a suspect only if he has probable cause to believe a crime has been committed is a bedrock
27 Fourth Amendment precept."). The court now turns to the strip searches which are the primary focus
28 of this case.

1 VI. The Law of Strip Searches

2 A strip search is defined under California law as:

3 “A search which requires a person to remove or arrange some or all of his or her clothing so
4 as to permit a visual inspection of the underclothing, breasts buttocks, or genitalia of such
person.” Cal. Pen. Code, § 4030(c)

5 Section 4030 distinguishes among strip searches, subparagraph (c); visual body cavity searches,
6 (d)(2); and physical body cavity searches, (d)(3).² The Oakland Police Department’s 1998 and 2004
7 policies defined a strip search as “any search that requires the officer to remove or arrange some or
8 all of a person’s clothing to permit visual inspection of the subject’s underclothing, breasts, buttocks,
9 or

10
11 genitals.” *See Opinion, Foster v. City of Oakland*, C-05-3110 (related case), Doc. No. 71, filed
12 March 27, 2008.

13 Strip searches are ordinarily conducted in a jail setting after a person has been arrested and
14 before placed in the general population of the jail. The Supreme Court in its seminal opinion, *Bell v.*
15 *Wolfish*, 441 U.S.520 (1979), addressed the Fourth Amendment parameters for strip searches of
16 prisoners and pretrial detainees. *Bell* did not address searches of arrestees or detainees before being
17 booked into a detention facility or introduced into the general jail population. Nor did *Bell* address
18 searches of probationers or parolees in the field or before arrest. The Court recognized that even
19 arrestees and inmates in a custodial facility “retain some Fourth Amendment rights” and that “[t]he
20 Fourth Amendment prohibits only unreasonable searches. *Id* at 558. This requires a balancing of the
21 need for the particular search against the invasion of personal rights that the search entails. Courts
22 must consider the scope of the particular intrusion, the manner in which it is conducted, the
23 justification for initiating it, and the place in which it is conducted. *Id.* at 559.

24 The Supreme Court also has noted that persons such as parolees and probationers have a
25 “diminished expectation of privacy” because they are under supervision by a probation or parole
26 officer. *Griffin v. Wisconsin*, 483 U.S. 868, 874 (1987). The terms and conditions of probation or
27 parole usually contain some provision for searches of the subject without warrant or probable cause,
28 such as a four-way search provision. The Court in *Griffin* characterized these as “special needs”

1 provisions that justify searches only upon reasonableness and not probable cause. Furthermore, in
2 *United States v. Knights*, 534 U.S. 112 (2001), the Supreme Court unanimously concluded that a
3 condition requiring a probationer to submit to a search of his person, property, residence, vehicle or
4 personal effects at any time, with or without a warrant on “reasonable suspicion” constituted a
5 reasonable search under the Fourth Amendment.

6 California has taken the search clause for parolees one step further, requiring that a parolee
7 submit to a search at any time “with or without cause”. Cal.Penal Code. § 3067. No particularized
8 or reasonable suspicion is required, although it must be for a “proper purpose”. *See People v. Smith*,
9 172 Cal.App.4th 1354, 1361 (2009). A search clause under section 3067 is treated as a condition of
10 release from confinement when the releasee is placed on parole. The parolee must agree as a
11 condition of release to certain terms and conditions including a condition that he submit to a search of
12 his person or property without a warrant and with or without probable cause. However, a search
13 which is “arbitrary, capricious, or harassing turns on its purpose” and may be “constitutionally
14 unreasonable”. *Id.* at 1362. In June 2006 the United States Supreme Court upheld California’s
15 suspicionless parole searches finding that the State’s “prohibition on ‘arbitrary, capricious, or
16 harassing’ searches” was sufficient to save its constitutionality. *Samson v. California*, 547 U.S. at
17 856 (citing and upholding the California Supreme Court’s earlier decision in *People v. Reyes*, 19
18 Cal.4th 743 (1998), *cert denied*, 526 U.S. 1092 (1999)). The question that now confronts this court is
19 whether a strip search of a parolee conducted in the field is arbitrary, capricious, harassing or for an
20 improper purpose.³

21 Also, as noted herein, a person under arrest, whether or not on probation or parole, may be
22 searched by a pat down search for drugs or weapons and for officer safety. Probable cause is
23 required in order to subject a person to arrest. A search of the person under these circumstances may
24 consist of a pat down search to satisfy the officer that the arrestee is not in possession of weapons,
25 drugs or other easily destroyed or disposed of contraband. The search generally consists of patting
26 the exterior of the clothing firmly and in the areas where such items may be secreted. It does not
27 consist of a strip search, even if the person is under arrest. Strip searches may be and are generally
28 conducted, if at all, upon the arrestee’s introduction into the general population of the jail to which he

1 is taken for booking and detention pending further proceedings. This court is mindful of the
2 sensibility of the Supreme Court in *Illinois v. Lafayette* when it observed that:

3 “the scope of a stationhouse search will often vary from that made at the time of arrest.
4 Police conduct that would be impractical or unreasonable - or embarrassingly intrusive - on
5 the street can more readily - and privately - be performed at the station. For example, the
6 interest supporting a search incident to arrest would hardly justify disrobing an arrestee on
7 the street, but the practical necessities of routine jail administration may justify taking a
8 prisoner’s clothes before confining him....”
9 462 U.S. 640, 645 (1983).

7 Certainly, strip searches are not permitted for a person who is merely detained. Detention
8 requires only that the officer have a reasonable suspicion that the defendant is involved in criminal
9 activity. The purpose of a detention is not to search the person for evidence of a crime. The purpose
10 of the limited search permitted under *Terry* and its progeny is “to allow the officer to pursue his
11 investigation without fear of violence”. *Adams v. Williams*, 407 U.S. 143, 146 (1972). Thus, a frisk
12 for weapons may be appropriate. This limited purpose does not include a search “to discover evidence
13 of crime”. *Id.* “So long as the officer is entitled to make a forcible stop, and has reason to believe
14 that the suspect is armed and dangerous, he may conduct a weapons search limited in scope to this
15 protective purpose.” *Id.* (emphasis added). This court has concluded, as explained herein, that the
16 officers were not entitled to make a forcible stop. It is also clear that if they had a legitimate basis for
17 the stop, their search would have been confined to a search for weapons if they feared for their safety.

18 At the point Bradshaw became an arrestee the officers could search him pursuant to an
19 arrest. That did not authorize them to strip search him. Bradshaw was not a parolee and therefore
20 was not subject to a search without suspicion. Nor have the officers articulated any reason why a pat
21 search would not satisfy their needs before taking him to the “stationhouse”. A search pursuant to
22 arrest would have satisfied their need to know whether he had weapons or contraband upon his
23 person. Furthermore, they did not even determine the basis for the warrant and whether that
24 portended any reason to fear for their safety. As it turned out, the warrant was for a bad check
25 charge.

26 The court evaluates the strip search that was performed on Lucas in light of his status as
27 parolee. As courts have reminded us, even persons on parole retain some Fourth Amendment rights.
28 Under *Samson* a parole search must be for a proper purpose and may not be arbitrary, capricious or

1 harassing. It is not clear what the purpose of the strip search was in the case of Lucas. The officers
2 had no prior notice that any of the occupants of the vehicle were involved in criminal activity or that
3 any of them were on parole or in violation of parole. If they had learned of the parole status by
4 reason of a lawful stop, they might have been entitled to investigate whether Lucas was in violation
5 of any of his parole conditions. They might have been entitled to pat search for drugs, weapons or
6 other contraband. However, even if they had a basis for arresting Lucas for parole violations or new
7 offenses, they were not entitled to perform strip searches in public. The guidance given by the
8 Department's policy and by case law takes into consideration limitations on strip searches and the
9 circumstances under which they may be conducted.

10 Since there are few cases dealing with strip searches conducted outside of a custodial
11 situation, the court looks to custody cases for guidance. A parolee has "at least as much protection as
12 he had within prison walls." *Latta v. Fitzharris*, 521 F.2d 246, 248 (9th Cir.), *cert. denied*, 423 U.S.
13 897 (1975). This is also appropriate because the theory behind section 3067 parole searches is that
14 parole is in lieu of some further period of incarceration. Thus, "a parolee remains in the legal custody
15 of the Department of Corrections through the balance of his sentence and must comply with all of the
16 terms and conditions of parole...." *People v. Smith*, 172 Cal.App.4th at 1361; *see also Samson v.*
17 *California*, 547 U.S. at 850 ("parole is an established variation on imprisonment of convicted
18 criminals....The essence of parole is release from prison, before the completion of sentence...."
19 (quoting *Morrissey v. Brewer*, 408 U.S. 471, 477 (1972))).

20 Even in custody cases, courts examine the "scope, manner, and justification" of the searches
21 to determine whether they sufficiently protect the Fourth Amendment interests of the incarcerated
22 and the security interests of the institution. *See Bull v. City and County of San Francisco*, 595 F.3d
23 964, 974 (9th Cir. 2010)(en banc). In *Bull* the Circuit approved the strip search policies employed by
24 the Sheriff's Department because they were limited to visual inspections and "expressly prohibited
25 tactile strip searches"; they were to be conducted in a "professional manner"; they were conducted in
26 a place that "afforded privacy"; and they were justified by a history of problems with contraband. *Id.*
27 The court noted that strip searches are "invasive and embarrassing" and "instinctively give[s] us the
28 most pause". *Id.* (citing *Bell v. Wolfish*, 441 U.S. at 558-59).

1 *Bull* also pointed out that the strip search practices at issue applied only to those arrestees
2 who were being placed into the jail's general population. The practices did not apply to those posting
3 bail, cited and released or held in what are referred to colloquially as "drunk tanks" until they became
4 sober. The court particularly noted that the decision in *Bull* did not "disturb our prior opinions
5 considering searches of *arrestees* who were not classified for housing in the general jail or prison
6 population." *Id.* at 981. "The constitutionality of searches of arrestees at the place of arrest, searches
7 at the station-house prior to booking, and searches pursuant to an evidentiary investigation must be
8 analyzed under different principles than those at issue today." *Id.*

9 In one of the few cases involving a strip search beyond the "prison walls", the Fourth Circuit
10 found that the search was not "unnecessarily intrusive" where the search was conducted inside a
11 police van and the subject's trousers were pulled down, but his shorts were not removed. *United*
12 *States v. Dorlouis*, 107 F.3d 248, 256 (4th Cir.), *cert. denied*, 521 U.S. 1126 (1997). In an Eighth
13 Circuit case the strip search of an *arrestee* in a motel room removed from public view was held
14 acceptable for Fourth Amendment purposes. *Richmond v. City of Brooklyn Center*, 490 F.3d 1002,
15 1008 (8th Cir. 2007).

16 Even if defendants could vault over the unlawful stop and bring themselves within the ambit
17 of suspicionless searches of parolees, they still cannot justify conducting a strip search of a parolee or
18 arrestee in public. They failed to take the precautions of conducting searches in a professional
19 manner by conducting them in public. They failed to conduct them in a place that afforded privacy.
20 The searches were not merely visual searches; they were not within the State's statutory definition of
21 strip searches, which contemplates the person, not the officer, rearranging or removing items of
22 clothing for visual inspection by the officer. Nor have the officers justified the searches as being for
23 a proper purpose. Searches of this nature, conducted in public, in view of passersby and others, are
24 arbitrary, capricious and harassing. They do not pass constitutional muster.

25 Finally, officers have long had an affirmative duty to intercede when they observe their
26 fellow officers committing violations of the constitutional rights of persons where they have the
27 opportunity to do so. *Cunningham v. Gates*, 229 F.3d 1271, 1289-90 (9th Cir.2000)(relying on *United*
28 *States v. Koon*, 34 F.3d 1416, 1447 n.25 (9th Cir. 1994), *rev'd on other grounds*, 518 U.S. 81 (1996)).

1 In this case Officer Mayer not only was standing next to Officer Thurston when the latter was strip
2 searching Bradshaw and saw the search, he also directed Thurston to search Bradshaw. Mayer also
3 testified that he understood his duty to intervene to prevent such violations. Thus, Officer Mayer
4 breached his duty and is liable to Bradshaw for the illegal strip search.

5 6 VII. Qualified Immunity on Strip Search Claims

7 A reasonable officer would know that strip searches conducted in public places under the
8 circumstances here are unreasonable searches under the Fourth Amendment. They do not comport
9 with well-established case law, state law or their own Department's policy. Thus, they do not enjoy
10 qualified immunity for their actions. From the time of *Bell v. Wolfish*, handed down in 1979, courts
11 and law enforcement officials have been advised that with respect to strip searches they must
12 consider the scope of the particular intrusion, the manner in which it is conducted, the justification for
13 initiating it, and the place in which it is conducted. In the words of one court:

14 "We think that, as a matter of law, no police officer in this day and time could reasonably
15 believe that conducting a strip search in an area exposed to the general view of persons
16 known to be in the vicinity whether or not any actually viewed the search is a
constitutionally valid governmental 'invasion of (the) personal rights that (such a) search
entails.'"

17 *Logan v. Shealy*, 660 F.2d 1007, 1014 (4th Cir. 1981)(quoting *Bell v. Wolfish*, 441 U.S. at 559).

18 Certainly, if strip searches gave the Supreme Court "the most pause" in 1979, they should have been
19 giving police officers pause for these last thirty plus years.

20 Finally, the Department's own policies dictated against strip searches under these conditions
21 and are sufficient to put reasonable officers on notice of what constitutes objectively unreasonable
22 searches. See, e.g., *Drummond v. City of Anaheim*, 343 F.3d 1052, 1062 (9th Cir. 2003), *cert denied*,
23 542 U.S. 918 (2004); *Headwaters Forest Defense v. County of Humboldt*, 276 F.3d 1125, 1131 (9th
24 Cir.2002), *cert denied sub nom. County of Humboldt v. Burton*, 537 U.S. 1000 (2002). For all the
25 foregoing reasons, the court finds that Officer Mayer is not entitled to avail himself of the defense of
26 qualified immunity. As explained above, Officer Mayer also understood his duty to intercede and,
27 thus, is not entitled to qualified immunity for the failure to intervene.

1 VIII. Summary - C 07- 6298

2 In summary, based on the findings and conclusions above, the court is satisfied that Lucas
3 and Bradshaw have established beyond a reasonable doubt that they were subjected to a traffic stop
4 without any reasonable suspicion that they had committed a traffic violation or any other violation of
5 law. At the time of the stop the officers had not observed any illegal conduct. They could not
6 articulate or agree upon a basis for the stop. No record was made of a vehicle code or other violation.

7 Furthermore, the officers had no reasonable basis for believing that any of the occupants
8 were on parole. Three black men in a moving vehicle does not create reasonable suspicion.⁴ It may
9 be, although not admitted, that the officers were playing the numbers game or profiling since their
10 mission was to look for parolees who were in violation of the terms or conditions of their parole.
11 However, the officers admitted that they did not recognize any of the occupants of the vehicle and did
12 not know whether any of them were on parole. In any event, whether a hunch or a suspicion, the stop
13 was not premised on any facts and was not reasonable. No articulable reason was given at the time of
14 the stop and no credible reason was given at trial. Upon stopping the vehicle Officer Mayer asked
15 whether any of the occupants were on parole. From that inquiry the events unfolded that led to a strip
16 search.

17 The court finds that the plaintiffs and their witnesses who testified to the strip searches of
18 Lucas and Bradshaw were credible and their testimony generally consistent with each other's
19 testimony and their earlier depositions to the extent they were used at trial. On the other hand the
20 court finds that the testimony of the officers and Agent Nakamura lacked credibility and was not
21 convincing.

22 With respect to Bradshaw, he was taken into custody on a warrant, but there was no
23 justification for a strip search on the street, which is where the court finds it occurred. With respect
24 to Lucas, it appears that some reason was needed to justify taking him into custody for a parole
25 violation. Hence, the officers drove him around in search of a violation. Ultimately, the officers took
26 Lucas all the way to Richmond, approximately thirteen to fourteen miles from Oakland, to conduct a
27 search of a house with little basis for a nexus to Lucas and for which there was no probable cause to
28 believe it was his residence at the time of the search. The truth of the officers' testimony was

1 strained; the time periods to which they testified were wholly unreasonable given the distances
2 involved.

3 The court is not persuaded by the fact that a parole violation was found by the California
4 Parole Board. That violation related to Lucas' place of residence and does not go to the basis for a
5 stop and a strip search in violation of the Fourth Amendment.

6 The court has held herein that the rights violated were clearly established at the time of the
7 violations and, therefore, Officer Mayer is not entitled to qualified immunity.

8
9 IX. Damages

10 The court having determined that plaintiffs Lucas and Bradshaw have established that their
11 rights under the Fourth Amendment were violated finds that they are entitled to damages.

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14 There are three types of damages ordinarily recoverable for constitutional violations brought
15 pursuant to 42 U.S.C. section 1983. Actual damages or compensatory damages are intended to
16 compensate persons for injuries caused by a deprivation of constitutional rights. These include out-
17 of-pocket losses, other monetary losses, and losses for personal humiliation, mental anguish and
18 emotional distress which are the direct result of defendant's unconstitutional conduct. *Memphis*
19 *Community School Dist. v. Stachura*, 477 U.S. 299, 306-07 (1986); *Floyd v. Laws*, 929 F.2d 1390 (9th
20 Cir. 1991).

21 If a plaintiff is unable to establish actual loss, he is still entitled to recover nominal or
22 presumed damages for the violation. *Memphis v. Stachura*, 377 U.S. at 308, n 11; *Carey v. Phipus*,
23 435 U.S. 247, 266 (1978); *Guy v. City of San Diego*, 608 F.3d 582, 587 (9th Cir. 2010); *Jacobs v.*
24 *Clark County School District*, 526 F.3d 419, 426 (9th Cir. 2008). Nominal damages are generally
25 defined as a "mere token" or "trifling", most often awarded in the amount of \$1.00. *See Cummings v.*
26 *Connell*, 402 F.3d 936, 943 (9th Cir. 2005)(citing *Carey v. Phipus*, 435 U.S. at 266-67); *Romano v. U-*
27 *Haul Intern.*, 233 F.3d 655, 671 (1st Cir. 2000), *cert denied*, 534 U.S. 815 (2001)(nominal damages
28 not limited to \$1, but "even amount of \$500 exceeds the appropriate higher boundary").

1 Punitive damages may be recovered where the defendant's conduct was willful, wanton,
2 malicious or oppressive, or when it involved reckless or callous indifference to the constitutional
3 rights of others. Such damages are also for the purpose of deterring others. *Memphis v. Stachura*,
4 377 U.S. at 306, n.9; *Smith v. Wade*, 461 U.S. 30, 51 (1983) ("we are content to adopt the policy
5 judgment of the common law - that reckless or callous disregard for the plaintiff's rights as well as
6 intentional violations of federal law, should be sufficient to trigger a jury's consideration of the
7 appropriateness of punitive damages"); *Dang v. Cross*, 422 F.3d 800, 807 (9th Cir. 2005). In making
8 this determination the court is also mindful of this Circuit's Jury Instructions on punitive damages.⁵

9 With respect to the unlawful stop and detention of Lucas and Bradshaw no actual damages
10 have been established. Neither plaintiff suffered any out-of-pocket or monetary losses. The evidence
11 does not show that the stop in and of itself caused any humiliation, mental anguish or emotional
12 distress. Therefore, only nominal damages are recoverable for the unlawful stop.⁶ The court awards
13 the amount of \$25.00 each to Lucas and Bradshaw as and for nominal damages.

14 As the detention continued it merged into the strip searches found unlawful by this court.
15 There is no evidence of actual monetary losses as a result of the continued detention and strip
16 searches. However, the strip searches were conducted in public view which witnesses, both friends
17 and strangers, could view. Plaintiffs testified to their humiliation and feelings of degradation as a
18 result of this public spectacle as well as the subsequent recurrent memories of feeling terrorized. The
19 testimony of the feeling of "submissiveness" also speaks to the sense of degradation. This feeling is
20 particularly poignant when viewed in light of the history of young black men in this country. Courts
21 have recognized the dehumanizing, humiliating and degrading affronts to personal privacy and
22 dignity that strip searches can engender. *See, e.g., Way v. County of Ventura*, 445 F.3d 1157, 1160
23 (9th Cir.), *cert denied*, 549 U.S. 1052 (2006)(scope of visual body cavity search in custody an
24 "indisputably [a] 'frightening and humiliating' invasion, even when conducted 'with all due
25 courtesy'"(quoting *Giles v. Ackerman*, 746 F.2d 614, 617 (9th Cir. 1984), *cert denied*, 471 U.S. 1053
26 (1985))); *Chapman v. Nichols*, 989 F.2d 393, 396 (10th Cir. 1993)("no doubt that a strip search is an
27 invasion of personal rights of the first magnitude" and "axiomatic that a strip search represents a
28 serious intrusion upon personal rights"); *Mary Beth G. v. City of Chicago*, 723 F.2d 1263, 1272 (7th

1 Cir. 1983)(strip searches “demeaning, dehumanizing, undignified, humiliating, terrifying unpleasant,
2 embarrassing, repulsive, signifying degradation and submission”).

3 Therefore the court finds that an award of actual damages for humiliation, mental anguish
4 and emotional distress is justified. The court takes note that awards in other strip search cases have
5 ranged from \$500 to \$75,000, depending on the circumstances, the extent of privacy or lack thereof,
6 the location, whether there were onlookers, and other factors that can add to or mitigate the degree of
7 humiliation. Nearly all of these cases involve strip searches in custodial or jail-type settings. Some
8 were by or in front of members of the opposite sex; some were in front of other inmates; some
9 afforded more privacy than others.

10 The court finds that conducting these searches in public view without any attempt to shield
11 the plaintiffs from bystanders and considering the manner in which they were conducted justifies a
12 damage award of \$100,000 each to Lucas and Bradshaw.

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14
15 Lucas also testified about the humiliation, shame, anguish and discomfort he felt while being
16 driven around in the back seat of the police car during the prolonged detention or arrest without
17 probable cause. Adding to these feelings was the fact the he was in the company of the same officers
18 who had strip searched them. The court finds that an award of \$5,000 for this violation is
19 appropriate.

20 Plaintiffs also seek an award of punitive damages for being subjected to the strip searches.
21 The facts support a finding that Officer Mayer acted with callous disregard and reckless indifference
22 to the Fourth Amendment rights of plaintiffs Lucas and Bradshaw. From the unlawful stop in an
23 effort to find parole violations to the detentions while trying to find a violation, to the strip searches
24 in clear violation and disregard fo well-established rights, case law and Department policy, the
25 officers proceeded to strip search the plaintiffs in the most flagrant way. Officer Mayer deliberately,
26 callously and oppressively violated plaintiffs’ Fourth Amendment rights. An award of punitive
27 damages in favor to each of the plaintiffs against Officer Mayer is justified since he himself searched
28 Lucas and he directed and failed to intervene in the search of Bradshaw.

1 Under both federal law and California tort law the court must look to three factors to
2 determine the amount of punitive damages: the nature of the defendant's acts, the amount of
3 compensatory damages awarded, and the defendant's wealth or ability to pay, i.e., net worth. *Prf'l*
4 *Seminar Consultants, Inc. v. Sino Am. Tech. Exch. Council, Inc.*, 727 F.2d 1470, 1473 (9th Cir. 1984);
5 *Adams v. Murakami*, 54 Cal.3d 105, 131 (1991)(without evidence of defendant's present wealth a
6 punitive damage award will not stand).

7 While this court heard evidence of defendant Mayer's annual salary and overtime, no
8 evidence was submitted to establish defendant's net worth. It would be error for this court to
9 determine an actual amount of punitive damages without such a showing. In view of the fact that this
10 court has found that plaintiffs made the necessary showing by a preponderance of the evidence that
11 they are entitled to an award of punitive damages and the trial having been conducted in a bifurcated
12 fashion, the court will allow the plaintiffs to submit evidence of defendant Mayer's net worth and for
13 defendants to respond, unless the parties can reach a stipulation. The parties shall contact the court's
14 Courtroom Deputy to set a schedule for these submissions.

15 //

16
17 X. Summary - C 07- 4179

18 In the case of plaintiffs Holmes, Engram and Rix, the court has found their testimony about
19 the several strip searches was not credible and finds that the defendant Vass and defendants'
20 witnesses accounts were credible. Therefore, these three plaintiffs have failed to establish by a
21 preponderance of the evidence that their rights were violated and their claims including state law
22 claims are dismissed with prejudice.

23 A supervisor's or municipality's actions or failures to act are actionable where it is first
24 established that the underlying constitutional violation actually occurred. *Andrade v. City of*
25 *Burlingame*, 847 F.Supp. 760, 767 (N.D. Cal. 1994), *aff'd sub nom. Marquez v. Andrade*, (9th Cir.),
26 *cert denied*, 519 U.S. 869 (1996). Therefore, to the extent that the liability of defendants Chief of
27 Police and City of Oakland depend on the liability of Officer Vass, plaintiffs cannot prevail against
28 them and the claims of plaintiffs Holmes, Engram and Rix against these defendants are dismissed

1 with prejudice.

2
3 CONCLUSION

4 The foregoing constitutes this court's Findings of Fact and Conclusions of Law as plaintiffs
5 Lucas and Bradshaw in C 07-6298 and plaintiffs Holmes, Engram and Rix in C 07-4179. Upon
6 submission of the information sought for the punitive damage award in C 07-6298, the court will
7 determine the appropriate award and issue a final order. The parties shall contact the court's
8 Courtroom Deputy and arrange a schedule for their submissions.

9 Since in both cases there are other plaintiffs whose claims have not been adjudicated, the
10 parties may seek a judgment under Federal Rule of Civil Procedure 54(b) as to the plaintiffs in this
11 proceeding if the requirements of the Rule can be satisfied. This may be done immediately with
12 respect to C 07-4179. Such a request cannot be made in C 07-6298 until the final order with respect
13 to all damages has issued.

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18 For the reasons set forth in these Findings of Fact and Conclusions of Law:

19 1) the claims of plaintiffs Holmes, Engram and Rix case C 07-4179 are DISMISSED with
20 prejudice, including the dismissal of claims against Sgt. Mork, the racial discrimination claims and
21 the state law claims; and judgment may be entered accordingly in favor of all defendants;

22 2) plaintiffs Lucas and Bradshaw are entitled to recover of Officer Mayer the amounts of \$25
23 each as and for nominal damages on their claims of an unlawful stop; \$100,000 each as and for actual
24 damages; \$5,000 to Lucas as and for the prolonged detention/arrest without probable cause; and such
25 amounts for punitive damages as this court determines proper upon the submissions referred to
26 above. Also in accordance with the motion referred to herein all racial discrimination claims in C 07-
27 6298 are DISMISSED. Upon the issuance of the final order with respect to all damages judgment
28 may be entered in favor of plaintiffs.

IT IS SO ORDERED.

Dated: August 4, 2011


MARILYN HALL PATEL
United States District Court Judge

ENDNOTES

1. Testimony refers to a four-way search clause. The parties agree in their testimony that such a clause means a search of the person, place, property and house. Although it is generally used in reference to a probation search, a parole search is similarly defined.

2. Physical body cavity searches are not in issue in this case. They are subject to different requirements and precautions.

3. Another principle of parolee searches is also of concern here. This involves the search of the residence in Richmond. While a parolee may be searched without cause, in searching a residence an officer still must have probable cause to believe the parolee is a resident of the place or house to be searched. *Cuevas v. De Roco*, 531 F.3d 726, 7332 (9th Cir. 2008). In this case, before searching the Richmond house, the officers learned from the Parole Officer that Lucas was homeless and generally was staying in motels. The only indicia connecting him to the Richmond location was a key found in his pocket. Lucas at first told the officers the key didn't belong to anything. Later he said the key was to his wife's place but that he did not live there. This was after he denied knowing anything about the Richmond address. While all of this may have provided a worthwhile lead to pursue further, it hardly amounted to probable cause to believe that it was his residence.

4. Chief Justice Warren, writing for the majority in *Terry v. Ohio*, observed that there were complaints of "minority groups, particularly Negroes, about wholesale harassment by certain elements of the police community." 392 U.S. at 14-15. He pointed to a report of the President's Commission on Law Enforcement and Administration of Justice finding that "field interrogations are a major source of friction between the police and minority groups". *Id.* These interrogations, he noted, often involve the routine stopping, questioning and frisking of youth and minority group members.

Today, black males make up a hugely disproportionate share of the parolee population in California. In 2000, they were just seven percent of the general male population, but represented one of every four men on parole. See State of California, Department of Finance, *Population Projections for California and Its Counties 2000-2050, by Age, Gender and Race/Ethnicity*, Sacramento, California, July 2007, available at www.dof.ca.gov/research/demographic/reports/projections/p-3/ (stating that in 2000, African American men represented approximately 6.4% of the general male population in California); compare State of California, California Department of Correction and Rehabilitation, *California Prisoners & Parolees 2009*, Sacramento, CA, 2010 at 65, available at http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Offender_Information_Reports.html, (stating that in 2000, African American men accounted for 25.2% of male parole and outpatient population in California.).

This may well lead officers to suspect that a car containing three black males is likely to include at least one on parole. This, however, is not reasonable suspicion, but only a hunch. It does not amount to specific, articulable facts sufficient to support an investigatory stop or detention.

5. Ninth Circuit Jury Instruction 5.5 provides in pertinent part as follows:

"Conduct is malicious if it is accompanied by ill will, or spite, or if it is for the purpose of injuring the plaintiff. Conduct is in reckless disregard of the plaintiff's rights if, under the circumstances, it reflects complete indifference to the plaintiff's safety or rights, or if the defendant acts in the face of a perceived risk that its actions will violate the plaintiff's rights under federal law. An act or omission is oppressive if the defendant injures or damages or otherwise violates the rights of the plaintiff with unnecessary harshness or severity, such as by the misuse or abuse of authority or power or by the taking advantage of some weakness or disability or misfortune of the plaintiff."

6. As a result of the unlawful traffic stop, an award of some amount of damages is appropriate, even if only nominal. In the case of Bradshaw, a warrant was outstanding and he would likely have been taken into custody at some point or he may have self-surrendered on the warrant. However, the evidence does not support a finding of either of these options. In the case of Lucas, as a result of the

1 unlawful stop he then suffered an unlawful arrest, prolonged detention as he was driven around the
2 City of Oakland and then to Richmond, and, finally, suffered incarceration on a parole violation.
3 There is no question that the events that occurred up until he was found to have violated his parole
4 were caused by the unlawful stop. The question is whether nonetheless he would have suffered a
5 parole violation and further incarceration. Again, there is no evidence in the record that would
6 support a finding on this question.
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